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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Wednesday 10 January 2018

3 pm

Prayers—read by the Lord Bishop of Gloucester.

Retirement of a Member: Lord Clinton-Davis

Announcement

3.06 pm

The Lord Speaker (Lord Fowler): My Lords, I should like to notify the House of the retirement, with effect from today, of the noble Lord, Lord Clinton-Davis, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I thank the noble Lord for his much-valued service to the House.

Agency Nurses

Question

3.07 pm

Asked by ***Lord Clark of Windermere***

To ask Her Majesty's Government, further to the Written Answer by Lord O'Shaughnessy on 27 November 2017 (HL3070), what assessment they have made of the operation of the "break glass clause" in the supply of agency nurses to hospital trusts from off-framework agencies.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, significant progress has been made in reducing agency staffing in the NHS. In 2016-17, the NHS spent £700 million less on agency staff than in the previous financial year. The "break glass" clause is one of a number of measures introduced to support patient safety while we seek to reduce the use of agency staff. Since a peak in April 2016, the number of nursing shifts procured from off-framework agencies has more than halved.

Lord Clark of Windermere (Lab): I thank the Minister for his Answer on this very complicated issue. However, does he recall his Answer to my Written Question of Monday in which he confirmed that the incoming Conservative-led Government in 2010 cut the number of nurses virtually every year, sometimes in excess of 10,000, with the result that we have fewer nurses working in the health service today than in 2010? That is the cause of our reliance on agency nurses, which costs the NHS billions of pounds. This cannot continue, so will the Minister use his influence to try to ensure a proper workforce plan for the NHS so that we have sufficient staff to meet the needs and demands of the British people?

Lord O'Shaughnessy: The noble Lord is quite right that we need sufficient staff. He will know that when the Government came to office in 2010 difficult decisions needed to be made about the funding of all public services, because of the economic situation at the time. It is worth pointing out that, since that time, there are over 10,000 more nurses on wards, which is obviously particularly important at this time of year. In terms of the future figures, I hope he will be aware that there will be an increase in the number of training places for nursing—£5,000 a year. Indeed, Health Education England, which is responsible for workforce planning, will deliver a long-term plan to make sure that we can tackle this issue, which has been a long-standing problem for the NHS.

Baroness Jolly (LD): My Lords, the Royal College of Nursing surveyed its members on this issue and two key things came out. One was that they wanted flexible working hours and the other was that they wanted the ability to choose a ward or specialty. It is clearly better for nurses to be employed by their trust rather than through an agency, so what are NHS trusts doing to accommodate nurses' desire for flexible working patterns and a choice of where they work?

Lord O'Shaughnessy: On the issue of flexible working there is an important distinction between agency working and bank working. Bank working provides a degree of security and familiarity, in that the nurses employed by nursing banks often work in the same hospitals. That is one of the most important ways that we can provide the flexible working which, as the noble Baroness quite rightly said, nurses want.

The Earl of Listowel (CB): Can the Minister reassure the House on the supply and retention of psychiatric nurses, and that they are getting the excellent support that they especially need? He might wish to write to me on that.

Lord O'Shaughnessy: I will certainly write to the noble Earl specifically on psychiatric nurses. He will, I hope, be aware of the plan to recruit many more mental health staff as we seek to radically improve outcomes and delivery in that area.

Baroness Gardner of Parkes (Con): My Lords, as a former hospital chairman, I am aware that agency staff are called in only when they absolutely have to be, when there is no other alternative. I wonder whether the National Health Service has looked at offering existing nurses in hospitals the opportunity of doing some more work out of hours, as some of them would find that convenient. There is a tendency for doctors as well as nurses to look for locum and agency jobs because they are better paid.

Lord O'Shaughnessy: It is that last issue that we are trying to address. One factor is that there is now an hourly rate price cap on agency spend, precisely to drill down into that issue. The reason that the number of agency staff went up was in response to the Francis review and what it said about safe staffing levels in the service. The immediate response was to deal with that through agency staff. That was expensive, of course, which is why we have had to push down those costs. Nurses have to come from somewhere, and my noble

[Lord O'Shaughnessy]
friend is quite right that using existing nurses and support from nursing banks is one way of meeting demand with better value for money.

Baroness Pitkeathley (Lab): My Lords, I noted carefully the Minister's words about 10,000 extra nurses on the wards. Can he update the House on the position for community and district nurses?

Lord O'Shaughnessy: The number of those nurses has fallen—as have the numbers in mental health, which is worth pointing out—and we are trying to address this. I think I made a slip of the tongue a moment ago when I said that £5,000 more will be spent each year on training nurses; I meant that there will be 5,000 more student nursing places.

Baroness Thornton (Lab): My Lords, the Question further teases out the sometimes expensive inadequacies in workforce planning in our NHS. Under the circumstances of the winter crisis and the 40,000-nurse shortfall, clearly trusts have no choice sometimes but to take on agency staff in specialist and other services—and this is expensive. Does the Minister expect that the late funding made available for the winter crisis will be spent largely in this way? Will his department penalise trusts for using agency staff in this way?

Lord O'Shaughnessy: The noble Baroness is quite right that agency staff are sometimes used to fill vacancies—about nine out of 10 vacancies are filled in that way. The key is to make sure that they are used in a proper, planned way that is not expensive. The point about the "break glass" clause is that the rules that exist to cap agency spend can be broken where there is a need and where that need is approved by the trust for patient safety purposes. That is an important feature of the system.

Baroness Masham of Ilton (CB): My Lords, in this present crisis, are more nurses taking advantage of the "break glass" clause?

Lord O'Shaughnessy: The number of uses of the "break glass" clause has actually fallen since April 2016, which was the peak. This shows that there has been a much more planned use of bringing in extra staff as they are needed, rather than an ad hoc response, which was what it was designed to address.

Baroness McIntosh of Hudnall (Lab): My Lords, further to the question from my noble friend Lady Pitkeathley, now that the noble Lord's department has had "Social Care" appended to its title, does he agree that community and district nurses must be a vital part of the interface between healthcare and social care? As he has indicated that he accepts that there are fewer of them, what is being done to ensure that there are more in the future?

Lord O'Shaughnessy: That is an incredibly important point. We know the role that district and community nurses have, particularly in the interface between hospitals and social care. I have pointed out that more nurses will be trained. That will provide an opportunity to recruit to those areas which have not seen the increases that other areas of nursing have done, including district and community.

Local Congestion: Investment

Question

3.15 pm

Asked by ***Baroness Neville-Rolfe***

To ask Her Majesty's Government what assessment they have made of the impact of investments in local roads on traffic congestion and productivity in local areas.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, as set out in last year's *Transport Investment Strategy*, our investment seeks to reduce congestion, raise productivity and support new housing. We estimate from investment appraisals that local major road schemes approved by the department since 2012 will produce an average of £4.50 return for every £1 invested. The department's evaluations found that local major schemes have been successful in delivering reductions in congestion, often leading to better access to employment and local businesses.

Baroness Neville-Rolfe (Con): I thank the Minister. I am glad about the investment in motorways, bypasses and some of the other things to which she refers, but do we deal adequately with local congestion, which is hitting productivity and increasing air pollution and is frustrating for those of us sitting in traffic jams? Is she aware that the challenge fund rules under which smaller councils apply for capital are costly and a bureaucratic deterrent to spending the money that the Government have rightly made available for local roads?

Baroness Sugg: My noble friend raises an important point, and I know that she met recently with the Roads Ministers to discuss this. We have been investing heavily in motorways and it is right that we concentrate spending where it is needed most, but we know that other important roads have long gone underfunded. That is why we are consulting on introducing a major road network from 2020. That will provide a share of the national roads fund to invest in bypasses and road widening to help improve congestion. My noble friend also raised the point of the complexity of these processes. There are many different schemes available for additional funding to local authorities—which, of course, is welcome—but they can be complex. In last year's *Transport Investment Strategy*, we committed to providing targeted support to local authorities to help develop their bidding and delivery capability in order to ensure that they get the appropriate funding.

Lord Watts (Lab): My Lords, the Government are quite rightly pleased about the investment in motorways and I think we would all agree with that, but the cuts in local government have meant there have been massive

cuts in local road expenditure. Are the Government going to do what they normally do—create a crisis and then claim credit when they do something about it?

Baroness Sugg: My Lords, much of the funding for local roads is paid directly to local authorities through the direct transport funding and the local growth fund. However, we recognise that local authorities do not always have enough money to tackle the large projects which are needed to improve productivity and reduce congestion. That is why we have a number of schemes to help local authorities pay for those, such as the major road network that I have just mentioned, the pinch-point scheme and the national productivity investment fund.

Lord Spicer (Con): My Lords, ever since Quintin Hogg, as he then was, went north in his flat cap, money has poured into the north-east. At the same time, the north-east has remained one of the poorest areas in this country. Is there a question involved there somewhere?

Baroness Sugg: I am sorry: I missed the question. Perhaps my noble friend could repeat it.

Baroness Randerson (LD): My Lords, there is a virtually permanent traffic jam on the A49 in Hereford. This is a vital route between north and south Wales and into the Midlands. Thousands of Hereford residents, as a result of the traffic jam, suffer dangerously poor air quality from the permanent congestion. Hereford Council has a well-worked out plan, which would involve regeneration, for a bypass. Does the Minister agree that this should be a top priority for the funding that the Government have offered for local councils?

Baroness Sugg: My Lords, I agree absolutely that the funding we are making available should address exactly the problem raised by the noble Baroness. As I have said, the major road network would fit that requirement.

Lord Stern of Brentford (CB): My Lords, does the Minister agree that dealing with congestion is not always best done through tarmac? There are tremendous opportunities in design, digital management, road pricing and public transport.

Baroness Sugg: My Lords, I agree that there are many different ways in which we can tackle congestion, including bypasses, link roads, road widening and, as the noble Lord says, new smart technology could help in this.

Baroness Jones of Moulsecoomb (GP): My Lords, I do not understand why the Government do not have any sort of plan for traffic reduction. Every time you build a road, you actually encourage traffic and create more air pollution and more congestion. Why not reduce traffic?

Baroness Sugg: We are looking to reduce congestion, but obviously people still need to travel and to drive to work. More than 17 million people use the roads to commute to work, and I think that we should encourage that.

Lord Rosser (Lab): My Lords, the Centre for Cities, a think tank focused on the economic benefits and development of cities, has recently questioned the effectiveness of investment in roads as a catalyst for local economic development in the light of the evaluations that have been undertaken. It suggests that the evidence is far from conclusive and comments that other ways of investing money to reduce congestion could be more effective. Can the Minister say what evaluations of the impact of investment in local roads the Government are relying on to show that such investment does represent value for money in terms of reducing congestion and increasing productivity in local areas, as compared with other ways of investing the money to achieve the same objective? Will the Government make those evaluations, on which presumably they rely, publicly available, if they have not already done so?

Baroness Sugg: My Lords, I mentioned in my Answer to the original Question that the average is a return of £4.50 for every £1 invested. Our last evaluation, back in 2014, looked at how the investment we are making benefits the economy. We are carrying out a new study that will be available later this year to ensure that we are spending money wisely.

Baroness Wheatcroft (Con): My Lords, one of the main causes of traffic congestion in towns seems to be when roads are dug up. Can my noble friend the Minister comment on the success of efforts to get the utilities to co-ordinate their digging-up-the-roads efforts?

Baroness Sugg: I agree with my noble friend. I believe that around 2.5 million roadworks are carried out in England each year, which cost the economy around £4 billion. My noble friend has rightly raised the lane rental schemes which we have been trialling. They have encouraged the utilities to work together at weekends and in the evenings in order to reduce roadworks and therefore congestion. The schemes have been successful and we have seen congestion in London and Kent cut by around a half. At the end of last year we announced that these schemes will continue after the trial period, and we are consulting on extending the scheme nationwide to spread their benefits to the rest of the country. We will publish our response on that in the next few months.

Georgia

Question

3.23 pm

Asked by ***Lord Harries of Pentregarth***

To ask Her Majesty's Government what action they are taking with the international community to ensure that Russia respects the territorial integrity of Georgia and withdraws its troops from Georgian soil.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, my right honourable friend the Foreign Secretary discussed Georgia with Foreign Minister Lavrov in Moscow.

[Lord Ahmad of Wimbledon]
The UK is a staunch supporter of Georgia's territorial integrity and sovereignty. Last year we supported two UN resolutions on Georgia's breakaway territories of Abkhazia and South Ossetia using OSCE statements to call out Russian activities; we have funded secondees to the EU monitoring mission and contributed to NATO and other international efforts to build Georgian resilience to Russian pressure.

Lord Harries of Pentregarth (CB): I thank the Minister for his Answer. It is coming up to 10 years since the Russia-Georgian war, and after all that time Russia is still in control of Abkhazia and South Ossetia while its troops are camped only 20 miles from the capital city, Tbilisi. Furthermore, it was reported last year that Russia has been moving its control points forward by several hundred yards, to the dismay of local farmers. Does the Minister not agree that this position is totally unacceptable and that it would be fatal for the international community to acquiesce to it in any way? We need new initiatives to get Russia to respect Georgian integrity.

Lord Ahmad of Wimbledon: The noble and right reverend Lord is of course right to point out the recent attempts by Russia to further strengthen its intervention in the breakaway regions. I assure all noble Lords that the Government continue to use all their international influence. Most notably, my right honourable friend the Prime Minister met with the Georgian Prime Minister in the margins of a recent meeting in Brussels, where the integrity of Georgia, concerning specifically the two regions the noble and right reverend Lord mentioned, were discussed and prioritised. We continue to support that. We of course continue to support the efforts currently under way in Geneva in this respect.

Lord Collins of Highbury (Lab): My Lords, obviously next week the NATO military committee will meet to discuss defence resilience in Georgia. Also, just before Christmas the EU high representative made a statement on the situation, particularly on the peacebuilding efforts of the EU. Will the Minister tell us how much the Government are involved in those peacebuilding efforts to ensure we have a solution that does not involve more war?

Lord Ahmad of Wimbledon: The noble Lord may well be aware—I have already alluded to it—of a recent bilateral meeting between our Prime Minister and the Georgian Prime Minister. We continue to support Georgian efforts within Georgia itself on the specific issues he raised on enhancing and securing the democracy that is currently in play. We want to further ensure its sustainability. Indeed, we are providing additional funding in the region of £5.5 million to support it. We stand behind Georgian integrity. We make that point to the Georgians bilaterally and we have made it clear in our interactions with the Russians. We continue to do it through all international engagement, including in the EU.

Lord Wallace of Saltaire (LD): My Lords, does the Minister recall how much British policy towards Georgia in the 26 years since it became independent has been closely co-ordinated with other EU member states? I recall, on one visit to Tbilisi, being invited by the British ambassador to sit in on one of these meetings in which EU ambassadors were drafting a joint report. I know that they had joint meetings with local Russian representatives, with the OSCE and with the Georgian Government. When will the Government explain to Parliament how they will organise continuing co-ordination with our European partners, with whom we share very common interests in this area, after we leave the European Union?

Lord Ahmad of Wimbledon: As the noble Lord will be aware from his own experience, it is not just our relationship through the EU. That will remain important once we leave the EU, but those relationships continue through other fora as well, such as membership of NATO—there are alliances there—and through the Security Council. France is a notable and permanent member and we can have candid discussions with other permanent members, such as Russia, which has a key influence in Georgia. I assure the noble Lord—indeed, the whole House—that we will continue to strengthen our international relationships, not just in Georgia. Where we need to work constructively, progressively and proactively with European partners we will continue to do so.

Lord West of Spithead (Lab): My Lords, does the Minister not agree that we need to tread with great care here? One of the reasons for the tension and difficulty is the very loose talk there was some years ago about Georgia becoming part of NATO and the threat that that was to Russia as it stood at the time. We need to be extremely careful not to make this a real cause célèbre. We need to try to defuse some of these areas because the tension between Putin and ourselves is too great anyway.

Lord Ahmad of Wimbledon: The noble Lord raises an important issue. It is why we have been working on not just restating the importance of the territorial sovereignty of Georgia, but building sustainable democracy in Georgia. The noble Lord is also quite right to point out the importance of the Russian relationship. Therefore I was delighted, as I am sure all noble Lords acknowledged, that for the first time in almost six years we had a Foreign Secretary visit Russia. He had a very constructive and open dialogue with the Russians on a variety of issues, including the current situation in Georgia.

Lord Elystan-Morgan (CB): Could the Minister identify those sovereign states that specifically guaranteed the integrity of this country upon it achieving statehood? Is that not an agreement binding in public international law still?

Lord Ahmad of Wimbledon: All noble Lords will be aware that, with the exception of Russia, as I mentioned, there are only, as I understand it, three countries—Nicaragua and Venezuela are two—which have actually recognised the two breakaway republics. To answer the question in reverse, all countries with the exception of

those four recognise internationally the territorial sovereignty, including that of Georgia, over the two breakaway regions.

Lord Pearson of Rannoch (UKIP): My Lords, do the Government agree that your Lordships' collective wisdom would be of value to them in the controversial area of our relations with Russia generally? If so, will they consider arranging a full debate here before too long?

Lord Ahmad of Wimbledon: The collective wisdom of your Lordships' House is of great value to the Government in all instances. As for a debate on Russia, I am sure that the appropriate usual channels will accommodate that request.

House of Lords: Membership

Question

3.30 pm

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government whether they intend to pause making further nominations for membership of the House of Lords by virtue of a life peerage until arrangements for reducing the size of the House have been agreed.

Lord Young of Cookham (Con): My Lords, while the House cannot keep growing indefinitely, it is important that the House's expertise can be refreshed and renewed from time to time to ensure that it continues to fulfil its vital role in scrutinising and revising legislation. The Government thank the noble Lord, Lord Burns, and his committee for their work and the House for expressing its views in the debate on 19 December. We are now considering the committee's recommendations carefully.

Lord Foulkes of Cumnock (Lab): I am grateful to the Minister for his response, but does he recall the debate on 19 December, when the collective wisdom of this House was very strongly that the Prime Minister should show restraint in making any further nominations to the House while we are considering the question of the size? Would it not be an embarrassment and make a nonsense of any further consideration of the Burns report if the Prime Minister were to go ahead and make a series of nominations before we have considered it fully?

Lord Young of Cookham: The point that the noble Lord has just made was made in the debate. I thought that it was dealt with very well indeed by the noble Lord, Lord Butler of Brockwell, who said:

"We are told that a further list of appointments is about to be published but I do not share the apocalyptic view expressed earlier by the noble Lord, Lord Steel. I believe that this can be regarded as a legacy issue arising from the May general election that does not inhibit the adoption of the approach in the Burns report".—[*Official Report*, 19/12/17; col. 2017.]

I hope the noble Lord is reassured by the words of the former Cabinet Secretary.

Baroness Smith of Basildon (Lab): My Lords, I always enjoy listening to the noble Lord's answers: he has perfect comic timing. As my noble friend Lord Foulkes said, there is widespread support in your Lordships' House for the principles and recommendations of the Burns committee to reduce the size of your Lordships' House. We know that for Burns to be effective the Prime Minister has to exercise restraint and a sensible, proportionate approach to appointments. It would be entirely unacceptable for Mrs May to announce a raft of new appointments and only later to accept Burns—I think that that was part of the point that my noble friend was making. I am happy now to make an offer and give a commitment to the noble Lord and to the Government that if the Government are prepared to accept the Burns proposals, including that departures from and introductions to this House should be on the basis of two out, one in and a 15-year term limit, probably from the recent general election, we will abide by that. Will the Government agree to do so as well?

Lord Young of Cookham: As I said, the Government are considering the report and will make their views known shortly. But to pick up the point that the noble Baroness just made, in her speech—she made a good speech, if I may say so, as did my noble friend and the Leader of the Lib Dems—she said:

"It is not about giving up patronage or appointments but about showing some restraint, as it used to be".—[*Official Report*, 19/12/17; col. 2105.]

The Prime Minister has demonstrated restraint. Putting on one side David Cameron's resignation honours, in the past 18 months the Prime Minister has appointed eight new Peers: five Cross-Benchers and three Ministers. I think that is demonstrating the restraint that the noble Baroness has just asked for.

Lord Tebbit (Con): My Lords—

Lord Cormack (Con): My Lords—

Noble Lords: Tebbit!

Lord Tebbit: My Lords, is there not another way that this little dilemma might be resolved? It is quite clear that when we look at the electorate as a whole and the votes that have been cast in recent elections, the Lib Dem Peers are grossly overrepresented here. Suppose 50 of them did the decent thing and resigned, this would all be resolved.

Lord Young of Cookham: If I may say so, my noble friend's question is addressed not to me but to the Benches opposite. It is indeed the case that on almost any objective basis the Liberal Democrats are overrepresented. In credit to them, they actually recognised this during the debate. The noble Lord, Lord Newby, when he spoke on behalf of the Lib Dems, recognised that their numbers would have to come down under the proposals of the Burns report. However, for the

[Lord Young of Cookham]
Lib Dems to unilaterally cut their numbers without anybody else doing anything at all would be to exhibit a generosity for which the Liberal Democrats are not well known.

Noble Lords: Oh!

Baroness Hayman (CB): My Lords, looking beyond the issue of restraint at the current time, the conclusion of the report was:

"Our proposals would only work, though, if the Prime Minister (and her successors) undertook to appoint no more new members than there were vacancies, and to do so in the proportions implied by our recommendations".

As has been said, the agreement of the Prime Minister is absolutely central to implementation of the report, and that was stressed throughout the debate. The Leader of the House was in listening mode during that debate. I ask the Minister: has the Leader had the opportunity to discuss the issues with the Prime Minister, and if she has not yet, will she do so in the very near future?

Lord Young of Cookham: As the noble Baroness said, my noble friend sat through nearly all the speeches in that debate. I can say that she will be having a discussion with the Prime Minister to discuss both the Burns report and the debate that we had in this House, and the Government's recommendations or views will be known in due course. I hope the House will understand that there were only three sitting days after the debate on 19 December. We have been back after Christmas for only three days. The Prime Minister has had personnel matters on her mind in the meantime. So I think the Government are entitled to a little bit of time before they come out with their views.

Lord Tyler (LD): In the discussion to which the Minister has just referred, will he and his colleagues make it absolutely clear to the Prime Minister that a very large majority of the speakers in that debate on 19 December made it absolutely clear that the proposals of the Lord Speaker's committee are wholly dependent on the Prime Minister accepting the principle that was inherent right through the report that there must be two out before there can be one in? Will the Ministers on the Front Bench make that clear to the Prime Minister? If she is not prepared to respect that, how can we expect anything to come from this exercise?

Lord Young of Cookham: In the analysis of the speeches in that debate, by my calculation, only nine out of 95 contributors were opposed to what was in the recommendations. I think that is as near a consensus as you are ever going to get in this House. I have to say that I thought the noble Lord struck a slightly different tone in his wind-up speech from that of his noble friend Lord Newby. Winding up for the Liberal Democrats —despite what the noble Lord has just said—he referred to Burns as,

"a temporary expedient … a process appropriate for the membership of a gentlemen's club"—[*Official Report*, 19/12/17; col. 2100]—

and an "incestuous" process that runs the risk of leading to our abolition. That does not sound to me like wholehearted support for Burns.

Sanctions and Anti-Money Laundering Bill [HL]

Order of Consideration Motion

3.38 pm

Moved by ***Lord Ahmad of Wimbledon***

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 4, Schedule 1, Clauses 5 to 41, Schedule 2, Clauses 42 to 47, Schedule 3, Clauses 48 to 53, Title.

Motion agreed.

Data Protection Bill [HL]

Report (3rd Day)

Relevant documents: 6th and 9th Reports from the Delegated Powers Committee

3.39 pm

Schedule 6: The applied GDPR and the applied Chapter 2

Amendments 82 and 83 not moved.

Clause 24: National security and defence exemption

Amendment 84 not moved.

The Lord Speaker (Lord Fowler): We are making great progress on this Bill.

Clause 25: National security: certificate

Amendment 85 not moved.

Clause 26: National security and defence: modifications to Articles 9 and 32 of the applied GDPR

Amendments 86 and 87 not moved.

Amendment 87A not moved.

Clause 28: Meaning of "competent authority"

Amendment 88 not moved.

Clause 33: The first data protection principle

Amendment 89 not moved.

Amendment 90

Moved by ***Lord Ashton of Hyde***

90: Clause 33, page 20, line 24, leave out "by adding, varying or omitting conditions" and insert "—

(a) by adding conditions;

(b) by omitting conditions added by regulations under paragraph (a)."

Amendment 90 agreed.

Clause 43: Right of access by the data subject

Amendment 91 not moved.

Clause 47: Right not to be subject to automated decision-making

Amendment 92 not moved.

Clause 48: Automated decision-making authorised by law: safeguards

Amendments 93 and 94 not moved.

Amendment 95 had been withdrawn from the Marshalled List.

Clause 75: Transfers of personal data to persons other than relevant authorities

Amendment 96 not moved.

Clause 79: Reporting of infringements

Amendment 97

Moved by ***Lord Ashton of Hyde***

97: Clause 79, page 47, line 12, at end insert—

"( ) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (5) has effect as if it included a reference to that Part."

Amendment 97 agreed.

Clause 80: Processing to which this Part applies

Amendment 98 not moved.

Clause 84: The first data protection principle

Amendment 99

Moved by ***Lord Ashton of Hyde***

99: Clause 84, page 49, line 17, leave out "by adding, varying or omitting conditions" and insert "—

(a) by adding conditions;

(b) by omitting conditions added by regulations under paragraph (a)."

Amendment 99 agreed.

Clause 94: Right not to be subject to automated decision-making

Amendments 100 and 101 not moved.

Clause 95: Right to intervene in automated decision-making

Amendment 102 not moved.

Clause 111: Power to make further exemptions

Amendment 103

Moved by ***Lord Ashton of Hyde***

103: Clause 111, page 61, line 21, leave out subsections (1) and (2) and insert—

"(1) The Secretary of State may by regulations amend Schedule 11 —

(a) by adding exemptions from any provision of this Part;

(b) by omitting exemptions added by regulations under paragraph (a)."

Amendment 103 agreed.

3.45 pm

Schedule 12: The Information Commissioner

Amendment 103A

Moved by ***Lord Puttnam***

103A: Schedule 12, page 184, line 4, at end insert "and such remuneration and other conditions of service must be affordable, realistic and responsible"

Lord Puttnam (Lab): My Lords, the last time I cleared a room like this, it was a very bad film indeed.

Amendment 103A is connected to Amendments 103B, 103C, 124A, 124B and 125A, and I move it with the support of my noble friend Lord Stevenson and the noble Lords, Lord Clement-Jones and Lord Holmes. In a well-run world, this group of amendments should not really need to be moved or pressed. They are designed purely to ensure that we have the data commissioner—and the office of that commissioner—that we need. Frankly, they are the natural consequence of all the debates that have occurred during the passage of the data protection legislation.

There can be no more important role over the next few years than that of the Data Commissioner. The organisation she is being asked to regulate is the largest in the world. A quite extraordinary statistic is that the four largest companies—Google, Amazon, Facebook and Apple—have between them a larger market capitalisation than the FTSE 100. That is the scale of the businesses we are asking the Data Commissioner to regulate. At the same time, under the Bill at present the resources available to her are wholly inadequate to that task. We went through a similar operation 15 years ago with Ofcom, and out of that, and through the collective wisdom of this House, we were able to ensure that Ofcom had the resources to become what is genuinely the gold standard of any media and telecoms industry regulator in the world. That is an achievement of this House of which we should be very proud. The purpose of these amendments is to achieve exactly the same for our ICO—something we can be proud of and that can do the job given to it.

During the passage of the Bill, we have loaded the ICO with significant new and additional responsibilities. The idea that we might have an underfunded and

[Lord Puttnam]
underresourced regulator that is not adequate to the task we are giving it is unthinkable. The purpose of these amendments is to prevent that. I could go on at some length, but I think the mood of the House is that it wishes to move on, so I shall listen to the Minister's response. I beg to move.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, it might be for the convenience of the House if I speak now as I have some information which may help the noble Lord, Lord Puttnam, and other noble Lords who have put their names to these amendments.

As I have repeatedly said during the debates on the Bill, the Government are committed to ensuring that the commissioner has adequate resources to fulfil her role as a world-class regulator and to take on the extra regulatory responsibilities set out in this Bill, so I agree with pretty well everything the noble Lord said. That is why we legislated for a new, GDPR-compliant charging regime in the Digital Economy Act, which we will turn to in the next group, but it is also why the commissioner needs to be able to recruit and retain expert staff.

I am therefore very pleased to announce that the Government have today granted the Information Commissioner's Office pay flexibility up to 2020-21 so that it can review its pay and grading structure. The commissioner will have the independence to determine the levels of pay necessary for the ICO to maintain the expertise it needs to fulfil its new and revised functions as a supervisory authority, subject to the standard public spending principles. I am also pleased to say that the Information Commissioner has agreed these arrangements. She said:

"I welcome the positive response to my business case for pay flexibility at the ICO. I am confident that this will allow me to prepare the ICO for its critical role under the new data protection regime ensuring that the UK has a strong and expert regulator in an area recognised for its importance to the digital economy and society as a whole".

This flexibility underscores the UK's commitment to an independent and effective data protection regulator, and I think goes a long way in responding to the points raised by the noble Lord's amendments. We all want an efficient, well-resourced ICO, so I am very pleased that this agreement has been reached. I should have said at the outset that I am very grateful to the noble Lord for coming to talk to me about it. I am glad to say he was pushing at an open door.

Lord Puttnam: I thank the noble Lord, who has been extraordinarily generous with his time. He and his officials could not have been more helpful in reaching what I regard as a perfectly satisfactory conclusion. My only wish is that we have a regulator that can do the job required of it and tackle the abuses along the way confidently and competently. I am extraordinarily grateful for this outcome. I am very happy to withdraw the amendment.

Amendment 103A withdrawn.

Amendments 103B and 103C not moved.

Clause 113: General functions under the GDPR and safeguards

Amendment 104

Moved by ***Lord Ashton of Hyde***

104: Clause 113, page 62, line 3, at end insert—

"(and see also the Commissioner's duty under section (Protection of personal data))"

Amendment 104 agreed.

Clause 114: Other general functions

Amendment 105

Moved by ***Lord Ashton of Hyde***

105: Clause 114, page 63, line 2, at end insert "(and see also the Commissioner's duty under section (Protection of personal data))"

Amendment 105 agreed.

Amendment 106

Moved by ***Baroness Neville-Rolfe***

106: After Clause 114, insert the following new Clause—

"Duty to support small organisations

(1) The Commissioner is to provide additional support to—

(a) small businesses,

(b) small charities, and

(c) parish councils,

in meeting their obligations under the GDPR and this Act.

(2) The additional support in subsection (1) may include, but is not limited to—

(a) advice on how to comply with the provisions of the GDPR and this Act;

(b) access to pro formas to demonstrate compliance with the GDPR and this Act; and

(c) in relation to fees to be paid to the Commissioner, discounted charges or no charges.

(3) In this Act, "small businesses" has the same meaning as in section 2 of the Enterprise Act 2016."

Baroness Neville-Rolfe (Con): My Lords, we have had something of a break, so perhaps I should remind the House what lies behind my Amendments 106, 125 and 127. It is the wish to reduce, as far as possible, the burden that the GDPR and the Bill will place especially on small entities—notably, small businesses, small charities and parish councils. I might add that it behoves us to stand back from time to time and recognise the burdens we all too often impose on people and businesses. This is very often for good reasons, but it can seem overwhelming for those at the receiving end, and it is important to minimise the burden where we can legitimately do so.

I also place on record my thanks to the Minister for a helpful meeting about my concerns. Against this background, Amendment 106 would place a duty on the Information Commissioner to support such small entities in meeting their obligations under the GDPR and the Bill. It gives examples of how this should be done, including compliance advice and zero or discounted fees. This is important both practically and as a

manifestation of how the state expects the commissioner to approach her duties. We should always remember that data protection will sound forbidding to some small organisations.

Furthermore, parish councils are fearful that they could face new costs of up to £20 million in total on one reasonable interpretation of the present text. They have been advised that an existing officer of a council could not act as a DPO because they are not independent. My noble friend Lord Marlesford mentioned this issue at Questions in December but, happily, I believe the Government take a different view, and it would be helpful to hear that on the record from my noble friend.

On the same lines, Amendment 125 would require the Secretary of State to consider fixing charges levied on small entities by the commissioner at a discounted or zero level. We need to find a way to avoid the imposition of significant costs for small entities into the future as cost recovery escalates in the administration of data protection.

Amendment 127 goes a little further. It would require the commissioner to have regard to economic factors in conducting her business. This is a fundamental point. The commissioner's remit contains elements which are similar to those of a judge and focuses predominantly on individual rights and protections. But the analogy is imperfect. Judges must go where justice takes them. The commissioner's role is different in important respects, and economic factors ought to hold a high place in her consideration. This is important for UK competitiveness and for continued growth and innovation, which is also of benefit to business, citizens and data science—and, indeed, UK plc.

The amendment seeks to ensure that the commissioner concentrates on this economic angle by reference to the commissioner's annual report. The noble Lord, Lord Stevenson, may remember that we introduced a special reporting requirement into intellectual property legislation which helped to ensure the right culture in that increasingly important area.

I should add that I am grateful to my noble friend Lord Arbuthnot and to the noble Lord, Lord Stevenson, for their involvement, and I am hopeful that the Minister will be able to meet the concerns I have outlined in my three amendments in a sympathetic and practical way.

Lord Clement-Jones (LD): My Lords, I rise briefly to support the noble Baroness, Lady Neville-Rolfe, in her amendment. She made a very good case. Current fee proposals really are very flawed. Clause 132, "Charges payable to the Commissioner by controllers", states:

> "The Secretary of State may by regulations require controllers to pay charges of an amount specified in the regulations to the Commissioner".

That, compared to the existing regime of registration, seems far more arbitrary and far less certain in the way it will provide the resources that the Minister, in a very welcome fashion, pledged to the noble Lord, Lord Puttnam. It is far from clear on what basis those fees will be payable. Registration is a much sounder basis on which to levy fees by the Information Commissioner, as it was from the 1998 Act onwards.

I wish to be very brief; this has already been brought up. The Minister prayed in aid the fact that there are already some 400,000 data controllers and it was already getting out of hand. If the department—indeed, if the ICO—is going to be in contact with all those it believes to hold data as data controllers, it will have to have some kind of records. If that is not registration, I do not know what is. The department has not really thought through what the future will be, or how the Information Commissioner will secure the resources she needs. I hope that there is still time for the Minister to rethink the approach to the levying of future tariffs.

The Earl of Erroll (CB): I just want to ask briefly whether small organisations will also include clubs and societies. I do not know whether that has been dealt with before. For instance, I am the chief of Clan Hay and we have a Clan Hay society. It does not make money, but it has membership lists and branches abroad. I discussed it with the ICO before this came up, and it thought we would definitely have to comply. I hope we will be covered as a small organisation.

Lord Carlile of Berriew (CB): My Lords, I have been involved from time to time in the creation of very small charities of a local nature, or have been involved in advising such organisations. I strongly support Amendment 106 moved by the noble Baroness. There is a real danger that, unless the ICO produces clear and simple pro formas that can be filled in quickly and easily by such organisations, they will be put off forming such charities, and local communities will thereby be deprived of great advantages that would be created by local citizens, which is something I understand the Government wish to encourage.

Lord Marlesford (Con): My Lords, I rise to support strongly my noble friend Lady Neville-Rolfe in these amendments, particularly Amendment 106. It was a glaring bureaucratic nonsense when it appeared in the Bill, and I referred to it at Second Reading. The Government must recognise that they have to be practical in the imposition of burdens on small bodies that are trying to serve the community. I declare my interest as the chairman of a parish council that would be very adversely affected if this were unchanged.

I do not necessarily expect bureaucrats in Whitehall to take on board the realities of grass-roots democracy in parish councils, but I would hope that Ministers, particularly those who are Members in another place—who have constituencies and whose job it is to be in touch with the real world—would never let this through. It is quite unacceptable as it stands, and I strongly support my noble friend. I hope the Minister will explain how he will deal with it.

Lord Deben (Con): My Lords, to add to what my noble friend Lord Marlesford said, in small villages, a small number of people do everything. That is increasingly true as many villages become, sadly, of one class and one age group. The person who is helping to run the parish council is also on the parochial church council and running the small local charity. These people are already worn down by the burdens that we lay on them.

[Lord Deben]
I speak from the countryside. We must ensure that we do not drive the few remaining people who will bear the burdens of the community away from those institutions because we ask them to do things that are, first, heavy and, secondly, inimical. If the Minister says, "It will not be like that", then we have got it wrong because we have given the perception that it will, and we must destroy that perception rapidly if we are happy that the Bill does not need the amendment. My view is that it does. I hope my noble friend will reassure me on that, but it is not me who must be reassured, it is the hundreds of people around the country who do these jobs for nothing, and yet for the good of all.

4 pm

Lord Stevenson of Balmacara (Lab): My Lords, the noble Lord, Lord Deben, said that a small number of people do everything in small communities. It sometimes feels like that here. I do not think that we need to say much more; all the issues have been raised and I am sure that when he responds, the Minister will answer some, if not all, of the questions. The underlying theme is that we do not want to spoil what is a very good Bill with desirable aims by failing to pick up all the areas that it needs to address, because there will be benefits from it, as we have heard. I think that the Government understand that, but they must not be in the position of willing the ends of policy without also willing the means.

Lord Ashton of Hyde: My Lords, I am grateful to all noble Lords who have spoken. I begin by thanking my noble friend Lady Neville-Rolfe, my predecessor in this role, for once again bringing the topic of small businesses to the House's attention. Other noble Lords have extended that from small businesses to small organisations—indeed, even clans. While I am on the important subject of the clan, the noble Earl asked whether they would be classed as small organisations. I am sure that they are not small, but the answer is yes, they will be subject to the provisions of the GDPR.

The serious, general reason is that the GDPR, which is EU legislation which comes into direct effect on 25 May, is there to protect personal data. We must remember that the importance of protecting people's personal data, particularly as it has developed since the most recent Data Protection Act was passed in 1998, has extended dramatically and concerns very personal items that belong to people. That is why it does not entirely matter whether it is a small or large organisation. Public authorities, such as parish councils, and other small organisations, such as charities, must take personal data seriously. They have obligations under the existing Act, but under the GDPR, they have more, and that is why. However, I and the Government instinctively support small organisations where we have it in our power to do so. I shall return to some of the specific points later.

I thank my noble friend for bringing this matter to the House's attention and for coming to discuss it at length; I welcome this opportunity to provide some reassurance. As I have said at previous stages of the Bill, I wholeheartedly agree that the Government should recognise the concerns of the smallest organisations and continuously look at ways to support them through the transition to a new data protection framework. The amendments tabled by my noble friend have all been designed with small organisations, charities and parish councils in mind.

Before I address each amendment in turn, I remind noble Lords that the Information Commissioner's Office already produces a variety of supportive materials intended to help organisations of all sizes to navigate their way to data protection compliance. I strongly encourage businesses to consult these, and to make use of the commissioner's new dedicated helpline, provided specifically for small organisations. I am pleased to say, in answer to my noble friend Lord Marlesford and, in part, to my noble friend Lord Deben, that the Information Commissioner has agreed to issue advice to parish councils, which will be published shortly. That is one of the organisations to which my noble friend referred. I understand exactly what he is saying, as I live in a small village and my wife is a parish councillor. I assure noble Lords that the issues of the Data Protection Act in relation to parish councils have been aired vociferously, and not only in this Chamber.

In addition, it is worth noting that the process for paying annual charges to the commissioner will become simpler and less burdensome, which I am sure will come as welcome news to small organisations—but we will return to that point shortly.

Amendment 106 would add a new clause that would give the Information Commissioner a duty to provide additional support to small businesses, charities and parish councils to meet their requirements under the GDPR. This may include, among other things, additional advice and discounted fees paid to the commissioner. I think that my noble friend Lord Marlesford, raised a point earlier on, and I hope that it will be helpful if I put it on record that parish councils can share duties like a data protection officer, which is a public authority that they have to have, under the GDPR, with other parish councils as well as with district councils. Parish clerks can also fulfil that role.

While I agree with my noble friend that small organisations should be supported to meet new obligations under the GDPR and this Bill, I cannot agree with the obligations that that would place on the commissioner. As I mentioned earlier, the commissioner has already published a wide breadth of guidance online and is continuing to develop this guidance as we near the date of GDPR implementation. I mentioned an example just now. Only recently, she updated her small business portal to make it easier for organisations to access GDPR-related resources. Given that the commissioner is already so active in this field, which the Government and, I think, my noble friend fully support, I fear that additional prescriptive requirements would distract rather than contribute.

Lord Storey (LD): While the Minister is responding on this issue—I was not allowed to move Amendment 87A because somebody shouted out "not moved" when it was in fact not moved by myself—could he include schools in his comments?

Lord Ashton of Hyde: We were going to have a debate on that—I gather that the Liberal Democrats did not want to bring it forward—but the basic answer

is that schools have responsibilities under the GDPR. They particularly have responsibility for personal data relating to children; they already have extensive responsibilities under the current Data Protection Act. So it is very much an issue for schools. In this case, to help them, the Department for Education is going to provide guidance—and I am assured that it will be out very soon. So they have particular responsibilities. The kind of personal data that they handle on a regular basis is very important; I believe that the noble Lord, Lord Clement-Jones, mentioned an example of some of the personal data that they hold in relation to free school meals, which has to be protected and looked after carefully. One benefit for the school system, as far as other organisations are concerned, is that they will have central guidance from the Department for Education—and I repeat that that is due to come out very soon.

I turn to Amendment 125, also proposed by my noble friend. It seeks to introduce a requirement on the Secretary of State, when making regulations under Clause 132, to consider making provision for a discounted charge—or no charge at all—to be payable by small businesses, small charities and parish councils to the Information Commissioner. Clause 132(3) already allows the Secretary of State to make provision for cases in which a discounted charge or no charge is payable. The new charge structure will take account of the need not to impose additional burdens on small businesses. This may include a provision in relation to small organisations.

I am happy to confirm that the Government have given very serious consideration to the appropriate charges for smaller businesses as part of the broader process for setting the Information Commissioner's 2018 charges. The new charge structure will take account of the need to not impose additional burdens on small businesses. It is important to note, however, that small and medium organisations form a significant proportion of the data controllers currently registered with the ICO—approximately 99%, in fact. The process of determining a new charge structure is nearly complete and we will bring forward the resulting statutory instrument shortly. I would, however, like to put one thing on the record: in putting together that charging regime, we have been mindful of the need to ensure that the Information Commissioner is adequately resourced during this crucial transitional period, but I want to be clear that the Government do not consider the 2018 charges to be the end of the story. There may well be more we can do further down the line to modernise a regime that has not been touched for the best part of a decade.

Amendment 127 would place an obligation on the commissioner, in her annual report to Parliament, to include an economic assessment of the actions that the commissioner has taken on small businesses, charities and parish councils. I agree with my noble friend about the importance of the commissioner being aware of the impact of her approach to regulation during this crucial period. As I said to the commissioner when we met, we must nevertheless also be mindful of maintaining her independence in selecting an approach. Even if we did not think that having an independent regulator was important—I want to be clear: we do —articles 51 to 59 of the GDPR impose a series of particular requirements in that regard. But, all of the above notwithstanding, I agree with a lot of what my noble friend has said this afternoon.

Turning to amendment 107A, in the name of the noble Lord, Lord Clement-Jones, concerning the registration of data controllers, I remember the Committee debate where the noble Lord tabled a similar amendment. I hope that I can use this opportunity to provide further reassurance that it is unnecessary. The Government replaced the existing notification system with a new system of charges payable by data controllers in the Digital Economy Act. We did this for two reasons. First, the new GDPR has done away with the need for notification. Secondly, and consequentially, we needed a replacement system to fund the important work of the Information Commissioner. All this Bill does is re-enact what was done and agreed in the Digital Economy Act last year. We legislated on this a year earlier than the GDPR would come into force because changes to fees and charges need more of a lead time to take effect. As I have already said, these new charges must be in place by the time the GDPR takes effect in May and we will shortly be laying regulations before Parliament which set those fees.

Returning to the subject matter of the amendment, under the current data protection law, notification, accompanied by a charge, is the first step to compliance. Similarly, under the new law, a charge will also need to be paid and, as under the previous law, failure to pay the charge is enforceable. We have replaced the unwieldy criminal sanction with a new penalty scheme—found in Clause 151 of the Bill.

Lord Clement-Jones: My Lords, can the Minister explain what the trigger is for the payment of the fees?

4.15 pm

Lord Ashton of Hyde: A charge will need to be paid if you are the data controller.

Lord Clement-Jones: That is not what I meant. That is not a trigger; it is notification by the data controller.

Lord Ashton of Hyde: If you process and control data, you will need to make a notification to the data commissioner. I do not understand why that is not a trigger.

Lord Clement-Jones: But that is very close to registration, my Lords.

Lord Ashton of Hyde: Exactly, so my point, which I was coming to but which the noble Lord has very carefully made for me, is that, in doing this, the Information Commissioner will obviously keep a list of the names and addresses of those people who have paid the charge. The noble Lord may even want to call that a register. The difference is, unlike the previous register, it will not have all the details included in the previous one. That was fine in 1998, and had some benefit, but the Information Commissioner finds it

[Lord Ashton of Hyde]
extremely time-consuming to maintain this. In addition, as regards the information required in the existing register, under the GDPR that now has to be notified to the data subjects anyway. Therefore, if the noble Lord wants to think of this list of people who have paid the charge as a register, he may feel happier.

I have talked about the penalty sanction. When the noble Lord interrupted me, I was just about to say—I will repeat it—that the commissioner will maintain a database of those who have paid the new charge, and will use the charge income to fund her operation. So what has changed? The main change is that the same benefits of the old scheme are achieved with less burden on business and less unnecessary administration for the commissioner. The current scheme is cumbersome, demanding lots of information from the data processors and controllers, and for the commissioner, and it demands regular updates. It had a place in 1998 and was introduced then to support the proper implementation of data protection law in the UK. However, in the past two decades, the use of data in our society has changed dramatically. In our digital age, in which an ever-increasing amount of data is being processed, data controllers find this process unwieldy. It takes longer and longer to complete the forms and updates are needed more and more often, and the commissioner herself tells us that she has limited use for this information.

My hope is that Amendment 107A is born out of a feeling shared by many, which is to a certain extent one of confusion. I hope that with this explanation the situation is now clearer. When we lay the charges regulations shortly, it will, I hope, become clearer still. The amendment would simply create unnecessary red tape and may even be incompatible with the GDPR as it would institute a register which is not required by the GDPR. I am sure that cannot be the noble Lord's intention. For all those reasons, I hope he will withdraw the amendment.

Baroness Neville-Rolfe: I thank the Minister for going into the issues in such detail, and for the support that is now being offered by the ICO through the transition. We have heard about the helpline, the websites, and new guidance—not only for parish councils, which I regard as a major breakthrough, but for small business and schools. That is all very good news. There will be a charge but it will be modulated, as I understand it, in a way to be decided and brought before the House in an order. I think the Minister understands the wish of this House not to load lots of costs on smaller businesses as a result of this important legislation, which we all know is necessary for a post-Brexit world.

My only concern related to the Minister's comments on what we might put into the report, because he rightly said that the Information Commissioner had to be independent, which I totally agree with. Equally, I thought that without undermining her independence, it was possible to ask her to report on economic matters and, for example, on how business learns about data protection and how that is going. I do not know whether he is able to confirm that today, but he made a point about independence and it was not clear whether it would be possible to put something into the reporting system.

Lord Ashton of Hyde: We are keen that the Information Commissioner be independent and is seen to be independent, and I know that the commissioner herself is aware of that. I cannot commit to anything today, but I will certainly take back my noble friend's question and see what can be done while maintaining the Information Commissioner's independence.

Baroness Neville-Rolfe: On that basis, I am happy to beg leave to withdraw my amendment.

Amendment 106 withdrawn.

Amendment 107 had been withdrawn from the Marshalled List.

Amendment 107A not moved.

Schedule 13: Other general functions of the Commissioner

Amendment 107B

Moved by ***Lord Mitchell***

107B: Schedule 13, page 186, line 23, at end insert—

"(j) maintain a register of publicly controlled personal data of national significance;

(k) prepare a code of practice which contains practical guidance in relation to personal data of national significance.

(2) For the purposes of sub-sub-paragraphs (j) and (k) of paragraph (1), personal data controlled by public bodies is data of national significance if, in the opinion of the Commissioner, —

(a) the data furthers collective economic, social or environmental well-being,

(b) the data has the potential to further collective economic, social or environmental well-being in future, and

(c) financial benefit may be derived from processing the data or the development of associated software."

Lord Mitchell (CB): My Lords, I will also speak to Amendment 108. The points I am addressing were glossed over in Committee, and I now wish to expand on this important issue.

Data is the new oil. This has been said many times in your Lordships' House, but as each day passes it becomes more true. Without stretching the analogy too far, in our country big data is about to become the 21st-century equivalent of North Sea oil. Because big data has such value, it will come as no surprise to see big tech companies swarming all over it. They have to because it is their lifeline. Many of our public bodies, particularly the NHS, are custodians of massive amounts of data, which big tech is eager to get its hands on. But we as legislators who act for the public good also have a responsibility to ensure that the public are protected and that, simply put, our treasure is not taken from us without clear authority or appropriate recompense. The data the public bodies hold belongs to us all. It is ours—our communal property—and we must tread carefully.

I will make one point as strongly as I can. I am a product of the data revolution; I have been professionally involved in the digital industry for over 50 years. For 40 of those I was an IT serial entrepreneur. This industry has been good to me; I fully understand that the tech sector needs light regulation. I know that at its best the digital revolution is a force for good but, equally, I know the dangers it poses, so I am trying to be cautious in what I propose. We stand at a crossroads. Computing power has reached astronomical capabilities, software is increasingly complex and artificial intelligence is now making dramatic inroads. Plus, we see the exponential availability of digital data. All these have contributed to the creation and brilliance of algorithms. The one thing we know for certain is that these exciting developments will keep on growing at exponential rates. In medicine, for example, new tools are being developed that are already enhancing diagnostic and treatment capabilities that could benefit all manner of healthcare, in particular our ageing population.

I welcome these developments, as I am sure we all do, many of which have come from our own private sector, and we should rejoice at this example of British expertise. However, at the same time we need to strike a balance between the ambitions of 21st century businesses and the responsibility of government to steward assets and resources of national significance so that the proceeds of technological developments benefit us all. My two amendments seek to codify how valuable, publicly controlled personal data is shared with big tech companies, and to ensure that financial returns, combined with wider social, economic and environmental benefits, are optimised.

I can best demonstrate the scale of this issue if I refer to the NHS. Ever since its formation in 1948—maybe they were kept even before that—the NHS has kept records of tens of millions of patients, literally from cradle to grave. These records are either in written form, or increasingly in digital format, but the magnitude of the collected data is huge. Very few countries can match the length and depth of the health records that the NHS is trusted to retain on behalf of the general public. Such data is called longitudinal data and, when it is bundled together, has great commercial value.

At Second Reading I gave the example of a company called DeepMind, which is a British subsidiary of Google. I visited DeepMind, which is an impressive organisation based here in London. It has purchased access to millions of anonymised data records from institutions such as the Royal Free and Moorfields Eye Hospital. It does not buy this data outright—it does not have to. It simply buys access. Such access enables it and companies like it to use very powerful computers and very sophisticated software to process millions of records with the help of artificial intelligence and machine learning.

This synthesising of data using AI capabilities is designed to produce algorithms, and it is these algorithms that become the product that companies such as DeepMind are able to monetise. They do this by selling the algorithms and their consulting services to the likes of pharmaceutical companies and healthcare providers and even back to the NHS itself. It is a global business and very profitable. At the Royal Free, these algorithms are being used to detect the early onset of kidney disease. At Moorfields Eye Hospital, also here in London, spectacular advances have occurred in similarly detecting potential optical problems.

This is data processing used for the benefit and enhancement of all mankind and we should welcome it. However, I am concerned that this precious and unique data is being offered to big tech companies by our public bodies in the absence of clear and consistent guidelines and without asking how best to obtain value for money in the broadest sense of the term.

Having dealt with big tech companies for most of my life, I know that they are staffed with exceptionally clever people and are no slouches at driving hard bargains. Unlike our NHS, they are not consumed with the day-to-day preoccupation of trying to balance their current budgets; with hundreds of billions of dollars in the bank, they can afford to play the long game, and it is easy to see who holds the aces in any negotiation. Put simply, I wish to protect our public bodies and ensure that we do not give away our inheritance. That is why we need to codify how we will obtain value for money from the sharing of data of national significance with the private sector.

My proposal is not just for the NHS and it is not just for now. All public bodies need protection and guidelines today and well into the future. That is why I have introduced my amendments. In Amendment 107B I seek, first, to require the Information Commissioner to maintain a register of publicly controlled personal data of national significance and, secondly, to prepare a code of practice containing practical guidance in relation to personal data of national significance. These are defined in subsection (2). In Amendment 108 I have set out the requirements of the code on personal data of national significance.

Lord Clement-Jones: My Lords, I want briefly to express sympathy with the noble Lord, Lord Mitchell. I share many of his concerns but essentially I think that we should look on the most optimistic side. I hope that he is also really describing the opportunities that can be made available with this kind of data, provided that it is accessible in the way described. I know that the noble Lord takes considerable inspiration from Future Care Capital's report on intelligence-sharing unleashing the potential of health and care data in the UK to transform outcomes. I thought that it was very good and well considered.

The noble Lord has put down a very important marker today but my one caveat is that I am not sure that there is yet a settled view about how to deal with this kind of data. In Committee we talked about data trusts. In her AI review, Dame Wendy Hall also talked about data trusts. I know that we need to head in a direction that gives us much more assurance about the use of the data in the way that the noble Lord, Lord Mitchell, has described, but I am not sure we have quite reached a consensus around these things to come to the decision that this is the best possible model.

4.30 pm

Lord Stevenson of Balmacara: My Lords, in earlier amendments I have tried to interest the Government in the idea of establishing what I loosely call a copyright

[Lord Stevenson of Balmacara]
of one's personal data. Another possibility put forward in a different amendment is that one could think of data provided by individuals as matters that would be controlled by them through the role of a data controller. I am not trying to be in any sense critical of the Government's response to this but I think I was ahead of my time—a nice place to be if you can—and I do not think the idea is quite ready to be turned into legislative form. I suspect that the solution lies in a data ethics commission, an idea that we will come to later in the agenda. Such a commission may be established by statute, either today or through some future legislative process, so that we can begin to think through these important issues. I was interested in a lot of what the noble Lord, Lord Mitchell, said in his introduction of the amendment because it has bearing on these issues.

I agree with the noble Lord, Lord Clement-Jones, that we are not quite there yet. However, worrying issues have been raised that need to be addressed, particularly in relation to data that is acquired, used and commercially exploited without necessarily being certain that we are getting value for money from it. The amendments are relatively mild in their exhortations to the Government, but they certainly point the way to further work that should be done and I support them.

Lord Ashton of Hyde: My Lords, I am grateful to the noble Lord, Lord Mitchell, for taking the time to come and see me to explain these amendments. We had an interesting conversation and I learned a lot—although clearly I did not convince him that they should not be put forward. I am grateful also to the noble Lords, Lord Clement-Jones and Lord Stevenson, who said, I think, that there may be more work to do on this—I agree—and that possibly this is not the right time to discuss these issues because they are broader than the amendment. Notwithstanding that, I completely understand the issues that the noble Lord, Lord Mitchell, has raised, and they are certainly worth thinking about.

These amendments seek to ensure that public authorities—for example, the NHS—are, with the help of the Information Commissioner, fully cognisant of the value of the data that they hold when entering into appropriate data-sharing agreements with third parties. Amendment 107B would also require the Information Commissioner to keep a register of this data of "national significance". I can see the concerns of the noble Lord, Lord Mitchell. It would seem right that when public authorities are sharing data with third parties, those agreements are entered into with a full understanding of the value of that data. We all agree that we do not want the public sector disadvantaged, but I am not sure that the public sector is being disadvantaged. Before any amendment could be agreed, we would need to establish that there really was a problem.

Opening up public data improves transparency, builds trust and fosters innovation. Making data easily available means that it will be easier for people to make decisions and suggestions about government policies based on detailed information. There are many examples of public transport and mapping apps that make people's lives easier that are powered by open data. The innovation that this fosters builds world-beating technologies and skills that form the cornerstone of the tech sector in the UK. While protecting the value in our data is important, it cannot be done with a blunt tool, as we need equally to continue our efforts to open up and make best use of government-held data.

In respect of health data, efforts are afoot to find this balance. For example, Sir John Bell proposed in the *Life Sciences: Industrial Strategy*, published in August last year, that a working group be established to explore a new health technology assessment and commercial framework that would capture the value in algorithms generated using NHS data. This type of body would be more suitable to explore these questions than a code of practice issued by the Information Commissioner, as the noble Lord proposes.

I agree that it is absolutely right that public sector bodies should be aware of the value of the data that they hold. However, value can be extracted in many ways, not solely through monetary means. For example, sharing health data with companies who analyse that data may lead to a deeper understanding of diseases and potentially even to new cures—that is true value. The Information Commissioner could not advise on this.

That sharing, of course, raises ethical issues as well as financial ones and we will debate later the future role and status of the new centre for data ethics and innovation, as the noble Lord, Lord Stevenson, mentioned. This body is under development and I am sure that this House would want to contribute to its development, not least the noble Lord, Lord Clement-Jones, and his Select Committee on Artificial Intelligence.

For those reasons, I am not sure that a code is the right answer. Having heard some of the factors that need to be considered, I hope the noble Lord will not press his amendment.

Perhaps I may offer some further reassurance. If in the future it emerged that a code was the right solution, the Bill allows, at Clause 124, for the Secretary of State to require the Information Commissioner to prepare appropriate codes. If it proves better that the Government should provide guidance, the Secretary of State could offer his own code.

There are technical questions about the wording of the noble Lord's amendment. I will not go into them at the moment because the issues of principle are more important. However, for the reasons I have given that the code may not be the correct thing at the moment, I invite him to withdraw his amendment.

Lord Mitchell: My Lords, I thank all noble Lords for their contributions to this short debate. I also thank the Minister for agreeing to see me prior to the Recess and for his comments today. However, this is an issue of precision—and we need precision on the statute book. All that has been suggested to me, which is that it can be found elsewhere or will be looked at in the future, does not give the definitive answer we require. That is why I would like to test the opinion of the House.

4.36 pm

Division on Amendment 107B

Contents 235; Not-Contents 204.

Amendment 107B agreed.

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4.53 pm

Amendment 108

Moved by ***Lord Mitchell***

108: Before Clause 119, insert the following new Clause—

"Code on personal data of national significance

The Commissioner must prepare a code of practice which contains—

(a) best practice guidance in relation to information sharing agreements between publicly funded data controllers and third parties;

(b) guidance in relation to the calculation of value for money where publicly funded data controllers enter into information sharing agreements with third parties;

(c) guidance about securing financial benefits from the sharing of such personal data with third parties for the purposes of processing or developing associated software, and

(d) such other guidance as the Commissioner considers appropriate to promote best practice in the sharing and processing of personal data of national significance."

Amendment 108 agreed.

Amendment 109

Moved by ***Baroness Kidron***

109: After Clause 120, insert the following new Clause—

"Age-appropriate design code

(1) The Commissioner must prepare a code of practice which contains such guidance as the Commissioner considers appropriate on standards of age-appropriate design of relevant information society services which are likely to be accessed by children.

(2) Where a code under this section is in force, the Commissioner may prepare amendments of the code or a replacement code.

(3) Before preparing a code or amendments under this section, the Commissioner must consult the Secretary of State and such other persons as the Commissioner considers appropriate, including—

(a) children,

(b) parents,

(c) persons who appear to the Commissioner to represent the interests of children,

(d) child development experts, and

(e) trade associations.

(4) In preparing a code or amendments under this section, the Commissioner must have regard—

(a) to the fact that children have different needs at different ages, and

(b) to the United Kingdom's obligations under the United Nations Convention on the Rights of the Child.

(5) A code under this section may include transitional provision or savings.

(6) Any transitional provision included in the first code under this section must cease to have effect before the end of the period of 12 months beginning with the day on which the code comes into force.

(7) In this section—

"age-appropriate design" means the design of services so that they are appropriate for use by, and meet the development needs of, children;

"information society services" has the same meaning as in the GDPR, but does not include preventive or counselling services;

"relevant information society services" means information society services which involve the processing of personal data to which the GDPR applies;

"standards of age-appropriate design of relevant information society services" means such standards of age-appropriate design of such services as appear to the Commissioner to be desirable having regard to the best interests of children;

"trade association" includes a body representing controllers or processors;

"the United Nations Convention on the Rights of the Child" means the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1989 (including any Protocols to that Convention which are in force in relation to the United Kingdom), subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force."

Amendment 109 agreed.

Clause 121: Approval of data-sharing and direct marketing codes

Amendments 110 to 115

Moved by ***Lord Ashton of Hyde***

110: Clause 121, page 66, line 13, leave out "or 120" and insert ", 120 or (Age-appropriate design code)"

111: Clause 121, page 66, line 16, at end insert—

"(1A) In relation to the first code under section (Age-appropriate design code)—

(a) the Commissioner must prepare the code as soon as reasonably practicable and must submit it to the Secretary of State before the end of the period of 18 months beginning with the day on which this Act is passed, and

(b) the Secretary of State must lay it before Parliament as soon as reasonably practicable."

112: Clause 121, page 66, line 18, leave out first "the code" and insert "a code prepared under section 119, 120 or (Age-appropriate design code)"

113: Clause 121, page 66, line 23, leave out "or 120" and insert ", 120 or (Age-appropriate design code)"

114: Clause 121, page 66, line 35, leave out "subsection (4)" and insert "subsections (1A) and (4)"

115: Clause 121, page 66, line 36, leave out "and 120" and insert ", 120 and (Age-appropriate design code)"

Amendments 110 to 115 agreed.

Clause 122: Publication and review of data-sharing and direct marketing

Amendment 116

Moved by ***Lord Ashton of Hyde***

116: Clause 122, page 67, line 5, leave out "or 120(2)" and insert ", 120(2) or (Age-appropriate design code)(2)"

Amendment 116 agreed.

Amendment 117 not moved.

Amendment 118

Moved by ***Baroness Williams of Trafford***

118: After Clause 125, insert the following new Clause—

"Records of national security certificates

Records of national security certificates

(1) A Minister of the Crown who issues a certificate under section 25, 77 or 109 must send a copy of the certificate to the Commissioner.

(2) If the Commissioner receives a copy of a certificate under subsection (1), the Commissioner must publish a record of the certificate.

(3) The record must contain—

(a) the name of the Minister who issued the certificate,

(b) the date on which the certificate was issued, and

(c) subject to subsection (4), the text of the certificate.

(4) The Commissioner must not publish the text, or a part of the text, of the certificate if—

(a) the Minister determines that publishing the text or that part of the text—

(i) would be against the interests of national security,

(ii) would be contrary to the public interest, or

(iii) might jeopardise the safety of any person, and

(b) the Minister has notified the Commissioner of that determination.

(5) The Commissioner must keep the record of the certificate available to the public while the certificate is in force.

(6) If a Minister of the Crown revokes a certificate issued under section 25, 77 or 109, the Minister must notify the Commissioner."

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, government Amendment 118 responds to an amendment tabled in Committee by the noble Baroness, Lady Hamwee. I said then that I recognised the concern that had been expressed about the lack of transparency as regards national security certificates and that I would consider what more could be done to address this.

Having reflected carefully on that debate, and on representations from the Information Commissioner, I am pleased to move Amendment 118 to address this issue. It inserts a new clause into Part 5 of the Bill which requires a Minister of the Crown who issues a certificate under Clauses 25, 77 or 109 to send a copy of the certificate to the Information Commissioner, who must publish a record of the certificate. We would normally expect the published record to be a copy of the certificate itself. As I indicated in Committee, a number of the existing certificates are already available online.

As an important safeguard under the new clause, the commissioner must not publish the text or part of the text of the certificate if the Minister determines, and has so advised the commissioner, that to do so would be against the interests of national security or contrary to the public interest, or might jeopardise the safety of any person. Where it was necessary to redact information in a particular certificate, there would still be a public record of the certificate as set out in subsection (3) of the new clause. While in practice we expect that most certificates will continue to be published in full with no need for such restrictions, as is currently

[Baroness Williams of Trafford]
the case, this provides an important safeguard where it is necessary for a certificate to include operationally sensitive information. The commissioner must keep the record of the certificate available to the public while the certificate is in force, and if a Minister of the Crown revokes a certificate the Minister must notify the commissioner.

In the Information Commissioner's briefing to this House on the Bill, she stated that there should be a presumption in favour of placing national security certificates in the public domain where to do so would not damage national security. She also noted that adopting a provision requiring her to be notified when a certificate was issued would provide a further safeguard to help inspire public confidence in regulatory oversight. I agree with her.

We have listened to concerns, and trust that this amendment will be widely welcomed. Indeed, it is worth recording that the ICO's latest briefing on the Bill said that the amendment was,

"very welcome as it should improve regulatory scrutiny and foster greater public trust and confidence in the use of national security certificate process".

I beg to move.

Amendment 118A (to Amendment 118)

Tabled by ***Lord Paddick***

118A: After Clause 125, in subsection (4), after "if" insert "and for so long as"

Lord Paddick (LD): My Lords, we are very grateful to the Government for introducing Amendment 118. We still believe that they could and should have gone further. Taking the example of the Investigatory Powers Act 2016—the fact that Ministers are unable to authorise interception without oversight by an independent judicial commissioner of that decision—we wonder why that sort of oversight could not be applied to these certificates as well. Clearly, we are grateful to the Government for going as far as they have done. We are just disappointed that they did not go as far as we wanted.

Lord Stevenson of Balmacara: My Lords, my noble friend Lord Kennedy is not available at the moment. He is occupied with a personal matter and has asked me to say that he supports the words of the Minister. She has listened to concerns. It is very welcome that she has done so and we agree with the amendment.

Amendment 118A (to Amendment 118) not moved.

Amendment 118B (to Amendment 118) not moved.

Amendment 118 agreed.

Clause 126: Disclosure of information to the Commissioner

Amendment 119

Moved by ***Lord Ashton of Hyde***

119: Clause 126, page 68, leave out lines 26 to 35 and insert—

"(2) But this section does not authorise the making of a disclosure which is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

(3) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (2) has effect as if it included a reference to that Part."

Amendment 119 agreed.

Clause 127: Confidentiality of information

Amendments 120 to 124

Moved by ***Lord Ashton of Hyde***

120: Clause 127, page 69, line 1, leave out from "Commissioner" to end of line 3 and insert "in the course of, or for the purposes of, the discharging of the Commissioner's functions"

121: Clause 127, page 69, line 13, leave out "provided" and insert "obtained or provided as described in subsection (1)(a)"

122: Clause 127, page 69, line 14, leave out from "manner)" to end of line 16

123: Clause 127, page 69, line 18, leave out from "of" to end of line 19 and insert "one or more of the Commissioner's functions"

124: Clause 127, page 69, line 28, leave out subsection (4)

Amendments 120 to 124 agreed.

Clause 129: Fees for services

Amendment 124A not moved.

Clause 132: Charges payable to the Commissioner by controllers

Amendments 124B to 125A not moved.

Clause 133: Regulations under section 132: supplementary

Amendment 126

Moved by ***Lord Ashton of Hyde***

126: Clause 133, page 72, line 12, leave out from "appropriate" to end of line 13

Amendment 126 agreed.

Clause 134: Reporting to Parliament

Amendment 127 not moved.

5 pm

Amendment 127A

Moved by ***Baroness Hollins***

127A: Before Clause 137, insert the following new Clause—

"Inquiry into issues arising from data protection breaches committed by or on behalf of news publishers

(1) The Secretary of State must, within the period of three months beginning on the day on which this Act is passed, establish an inquiry under the Inquiries Act 2005 into allegations of data protection breaches committed by, or on behalf of, news publishers.

(2) The inquiry's terms of reference must include, but are not limited to,—

(a) to inquire, in respect of personal data processing, into the extent of unlawful or improper conduct within news publishers and, as appropriate, other organisations within the media, and by those responsible for holding personal data;

(b) to inquire, in respect of personal data processing, into the extent of corporate governance and management failures at news publishers;

(c) in the light of these inquiries, to consider the implications for personal data protection in relation to freedom of speech; and

(d) to make recommendations on what action, if any, should be taken in the public interest."

Baroness Hollins (CB): My Lords, some in this Chamber have taken the view that the Leveson agreement, which united all parties across both Houses just four years ago, has been overtaken by events and that yet another inquiry into press regulation is now needed. That is precisely the pattern of events that has followed virtually every single inquiry into press misconduct over the last 70 years, when Governments of both left and right have first prevaricated and then surrendered to concerted press lobbying, with missed opportunity after missed opportunity. Let us be clear where we are: Parliament has already legislated, with the help of a cross-party consensus, for much of the Leveson framework. We have a royal charter and a Press Recognition Panel, both following the Leveson recommendations. We have the establishment of a recognised press self-regulator, which meets the Leveson criteria. So a failure to fulfil the whole cross-party agreement does not represent a failure of the Leveson inquiry, or of the recommendations that followed, but rather of political courage to complete the jigsaw.

This amendment, tabled by me and supported by the noble Lords, Lord Stevenson, Lord McNally and Lord Lipsey, would require the Government to proceed with a public inquiry into data protection breaches at national newspapers. I am grateful for their support and for the encouragement I continue to receive from so many Members across your Lordships' House. But a brand new inquiry is unnecessary, as the spirit of this amendment would be fully satisfied by the completion of the second part of the Leveson inquiry. That is my amendment's intention, which is why the terms of reference specified in the amendment so closely resemble those of part 2 of the Leveson inquiry, within the scope of the Bill with respect to data protection.

There are three reasons why part 2, or a very similar inquiry, should go ahead. First, there is the sheer scale of unlawful conduct and the lack of any accountability. Secondly, there are the traumatic consequences for the many ordinary people who are victims. Thirdly, there are the ongoing implications for the conduct of powerful press organisations today. I shall deal with each in turn briefly.

Part 2 of the Leveson inquiry was designed to delve into the extent of criminality, its cover up, and the collusion between press and police, how it was able to persist, and who was ultimately responsible. We know, for example, that private data belonging to thousands of individuals was illegally accessed on a more far-reaching scale, and in many ways more consequential, than in phone hacking. This type of data theft was rarely in the public interest and was therefore unlawful. We know that these activities were not restricted to the *News of the World*—far from it: they took place at the *Mirror*, the *Sunday People* and the *Sun*, while evidence has emerged that they took place at the *Daily Mail*, the *Express* and the *Times* as well.

A six-week civil trial of the *Sun* for four claimants, with 50 more following, is starting imminently, alleging widespread data theft from 1998 through to this decade and an illegal cover-up. There has still been no inquiry into this widespread illegal conduct, and the only senior newspaper executive held to account is Andy Coulson at the *News of the World*. If corporate misbehaviour on this scale had occurred in any other industry, our newspapers would quite rightly have been calling for heads to roll and for government to intervene.

It is perhaps unusual to mention this, but I have some special guests today who have been personally affected by the misuse of their personal data. I have not spoken personally before, and it is not easy to do so, but it seems that some people do not understand what goes on in our media. Members of your Lordships' House may be familiar with some of the abuses and intrusions that my family suffered and know that I gave evidence to part 1 of the Leveson inquiry, but they may not be aware that our data rights were repeatedly breached by newspapers. One consequence of having your personal data stolen, and not knowing how, is what it does to your own behaviour. I actually withheld information about my daughter's progress from close family and friends after her life-threatening spinal injury because I began to suspect people I knew of speaking to the media. I stopped trusting people, even people in my own family, my neighbours and my best friends. I did not trust them. I did not know about hacking and blagging. I actually used to joke about how I thought perhaps the journalists who sent flowers to the hospital every day had put a chip in them so that they could capture our conversations in the waiting room when my daughter was fighting for her life in intensive care. That is what I thought. My daughter's story was primarily a good news story, the triumph of hope over adversity, a story of recovery, not tragedy, but we had to cope with frequent door-stepping and long-range lenses being used to steal pictures, and the intrusion went on for months and months.

At the time of my daughter's injury, I was a university professor and the head of a prestigious academic professional college. I was amazed by the prevalence of plagiarism in the press. Plagiarism in academia is a dismissible matter. I had no idea, until my family was the subject of intense media scrutiny over many months, just how commonplace plagiarism is. Typically, one paper's so-called news on Wednesday would simply be downloaded and reprinted, virtually word for word, in a second unrelated paper on Thursday and in another on Friday, and if the second and third papers added a couple of new words, they might even call it an exclusive. When I, as an academic, publish findings, they have to be accurate. One newspaper article had 28 supposedly objective facts, of which only two were correct. The noble Lord, Lord Black, will be pleased to know that the *Daily Telegraph* was the most restrained newspaper, but your Lordships' House may be surprised to know

[Baroness Hollins]
that the only serious and accurate article about the implications of a high-level spinal injury for a pregnant woman was in *Hello* magazine. It was a good article.

Data theft—often disingenuously referred to as leaks—also affects public bodies. I asked to see the Secretary of State in the Department of Health after a story about my learning-disabled son appeared in the *Daily Mail*. The account was uncannily similar to some evidence he had given in confidence to a government taskforce. The Secretary of State apologised and said it was the fourth data leak that month, but could not or would not tell me how this intensely private information came to be published in a national newspaper. I spoke about that to the Leveson inquiry. The response was that the information was already in the public domain. It was not, and my son was a vulnerable adult, and printing his photograph put him at risk.

Some people experienced much worse than this, and their names are etched in all our memories. Remember the heartache of the Dowler and the McCann families? Alongside other media assaults, these families had personal data stolen and processed by the media. There are countless other private individuals whose lives have been irrevocably changed by hostile and misleading reporting, often following data breaches through the theft of medical records, bank account details, phone numbers or other private data.

Before today's debate, I met with Edward Bowles, whose 12 year-old son Sebastian lost his life in a bus crash in Switzerland. At a time of such trauma, his and his family's suffering was made worse by the conduct of national newspapers which, in addition to repeated other intrusions, stole images of the family and published them without consent. These included images of Mr Bowles and his nine year-old daughter grieving after Sebastian's death, and family photographs taken from Edward's private Facebook account. Sebastian's last personal messages to his family from the school's website were obtained and published without even asking the family.

These data breaches were committed by newspapers with no public interest whatever and occurred in the middle of part 1 of the inquiry, when the press were supposedly on their best behaviour. This is why we still need to understand how such gross and widespread abuse was allowed to happen in the first place and to ensure that ordinary people are protected from those who steal private data to further their own corporate interests. We do not know how much improper and unlawful use of our data was going on, or may still be going on, because of a widespread cover-up. Corporate governance structures remain unreformed and many of the same newspaper executives remain in place.

I chaired a meeting for journalist whistleblowers before the Recess and we heard evidence of the kinds of data theft that they were commissioned to carry out by their editors in pursuit of stories with no public interest whatever. They were confident that these practices persist today, despite assurances from editors and proprietors that those days are gone. Their stories deserve a wider audience. Part 2 of the Leveson inquiry would allow them to be told and allow us to understand from the past how we can better protect the public interests of both private individuals and journalists in the future. The Government have been consulting on whether to complete the Leveson inquiry since November 2016—over a year ago. It should never even have been a matter of consultation but simply a matter of good faith that an inquiry promised to victims of crime should be completed. The failure to go ahead brings public inquiries into disrepute.

It is time to stop prevaricating and act decisively. I hope the noble and learned Lord the Minister will be in a position to assure your Lordships' House that he has a firm commitment to commence part 2 of the Leveson inquiry. Without such a promise, I intend to divide the House, and I hope the House will support both my amendments and the important amendments of the noble Earl, Lord Attlee, Amendments 147, 148 and 216, which are tabled as a package. I hope we will make serious and genuine progress towards independent press regulation today. I beg to move.

Earl Attlee (Con): My Lords, I have Amendment 147 and the consequential Amendments 148 and 216 in this group. It may be convenient if I suggest to the House the choreography of how this group might work. The noble Baroness, Lady Hollins, has moved her amendment, which is what we are debating now and will decide on. I will speak to my amendments only once now, and other noble Lords can contribute to all the amendments being debated. I expect that the Minister will reply, the noble Baroness, Lady Hollins, will respond, and we will then deal with her amendment. After the formalities with other amendments, I will formally move my Amendment 147 and deal with any points arising from this debate in respect of it. I believe it is in order for noble Lords to make a substantive contribution after I move my amendment, at that time, but it may be more convenient for the House for noble Lords to do so now, during this current debate.

It goes without saying that I fully support the noble Baroness, Lady Hollins, in her Amendment 127A. We must get to the bottom of what has been going on. My amendments would incentivise media operators to sign up to an independent press regulator in respect of data protection claims. This is achieved in the same way as the yet-to-be-commenced Section 40 of the Crime and Courts Act 2013. My consequential Amendment 216 ensures that Amendments 147 and 148 come into effect on Royal Assent, and deny Ministers the discretion not to implement what Parliament might agree to, as has been done with Section 40.

5.15 pm

I remind the House that I have never been abused by the media; I do not know any celebrities who are not, or have not been, parliamentarians. Post the Leveson report, the Crime and Courts Act has been passed. A royal charter is in place that is exceptionally difficult to change, but I expect my noble friend Lord Black might have some comments on that. The Press Recognition Panel is in operation. Its principal function is to determine whether an applicant press regulator meets, and continues to meet, all 29 criteria for recognition laid out in the royal charter. The PRP has recognised the press regulator, Impress, which covers a readership of 4.5 million people, but other regulators could be approved.

In Committee, my noble friend Lord Black suggested that IPSO could be made compliant. To meet one of the criteria of recognition, future self-regulators of the press must offer a compulsory and low-cost arbitration service. Newspapers that joined a regulator that had obtained recognition would therefore be bound to be offering low-cost compulsory arbitration for media claims, provided they were not vexatious or frivolous. Arbitration is cheaper and quicker than court for both sides—defendant publishers and claimant members of the public.

The costs-shifting measures in Section 40 of the CCA and my amendments provide that if a claimant brought a data protection claim against a newspaper that was signed up to a recognised regulator but the complainant refused to use the arbitration service on offer, the claimant would have to meet all his own legal costs in the case, win or lose. This is because the only motive for a claimant insisting on going to court is to "chill" the publishers' reporting—think Robert Maxwell.

By requiring the claimant to meet their own costs, publications are protected. They are protected from the risk of paying ruinous costs, should they lose. It seems a bit odd that investigative journalists do not welcome this with open arms, although I know of some very high-profile and experienced journalists who do so.

As media advertising has pointed out, these costs-shifting provisions can work in the other way if an operator does not sign up to a recognised regulator and thus deprive claimants of access to the compulsory arbitration system that Leveson recommended. They would, indeed, have to meet the costs of any claim against them, win or lose. This was in response to a practice exposed at Leveson of some newspapers avoiding legal claims by using their expensive lawyers to frighten off claimants, of which more in a moment.

There is a further protection for the media as the judge may make a different costs award if appropriate—for example, if the claimant does not behave reasonably. Data protection claims were not covered by Section 40 in 2013. They were left out as a concession to the press. This amendment would fix that anomaly by adding data protection claims for which Section 40 is applicable.

The noble Baroness, Lady Hollins, referred to the experience of Edward Bowles and the tragic loss of his son. I have been in communication with Juliet Shaw who has emailed many of your Lordships with her experience of not being able to secure justice. By doing so, she has saved much of the House's precious time. The "Sex and the Country" article was a clear libel, and had hugely damaging effects on Juliet's life and the perceptions her friends and family had of her. In preparing her claim, she was threatened by a lawyer acting for the *Daily Mail* in a phone call that, given the severe costs involved, she should drop her claim lest the *Mail*—I quote what was put to the Leveson inquiry, "be in the unfortunate position of having to make you homeless".

Associated Newspapers applied to have Juliet's claim thrown out on the basis that it had no prospect of success but, following the hearing at the Royal Courts of Justice, the claim was given leave to proceed. Associated Newspapers subsequently offered a clarification or a modest settlement to prevent a full trial. Therefore, she was forced to accept a modest settlement, given the risks involved in taking the matter further.

Your Lordships will be aware of some counter-arguments, and it would be foolish of me not to address them. The first claim is that this is state regulation of the media. The House is fortunate to have the services of my noble friend Lord Black of Brentwood, who has great experience in the print media. Without his help, we could so easily make some ghastly mistakes with the Bill, and the Minister has already taken on board some of his suggestions.

However, in Committee, no matter how hard I pushed my noble friend, he could not successfully explain how Ministers or the state could interfere in the new system of independent press regulation. Furthermore, neither could any other Member of the Committee, not even the noble Lord, Lord Lester of Herne Hill, nor the noble Lord, Lord Pannick. Insinuations were made that the £3 million of public money to pump-prime the Press Recognition Panel represents some form of state influence, but the model provided that in future, fees from recognised regulators would provide the necessary income stream. I remind the House that the courts are funded by and rely on the state, but no one suggests that they are not independent.

The second claim is that Impress is a creation of, and controlled by, Max Mosley. He indeed supplied the finance, which was necessary because Section 40 does not apply if there is not at least one recognised regulator in operation, for obvious reasons. However, the money went through a family trust and then, I think, another trust, so that he could not interfere with the independence of Impress. The News Media Association took this and other matters relating to the recognition system to the courts by judicial review and lost on all counts. We can be confident that the courts properly considered this matter, as counsel for the NMA was none other than the noble Lord, Lord Pannick.

Viscount Hailsham (Con): Before my noble friend moves on, would he care to tell your Lordships why he is making a serious distinction in law between IPSO and Impress, because to the minds of many of us, IPSO is a perfectly well regulated and constituted regulator?

Earl Attlee: My noble friend makes an excellent point, which I shall come to in a moment.

The third claim is that the Leveson system is unnecessary, as the new IPSO is much better than the previous Press Complaints Commission. I dealt with this in Committee by identifying some, but not all, of IPSO's deficiencies. These are, first, that IPSO is not obliged to consider discrimination complaints from a group—for instance, a religious or ethnic group. It has also not yet dealt with a matter so serious as to merit levying even a £10 fine. Finally, in three years of operation, IPSO has not arbitrated a single case. In Committee, I was not challenged on any of those assertions, and I am not surprised, because they were checked very carefully.

[Earl Attlee]

I hope that noble Lords will support me in the Division Lobby in order that the House of Commons is given the opportunity to provide the vital costs-shifting protection that the public need and deserve in respect of data protection claims. Of course, this would also send a clear message to the Government that they should bring into force the rest of Section 40 immediately, as Parliament agreed to and voted for in 2013.

Lord Lester of Herne Hill (LD): Is the noble Earl aware that there are some, including myself, who believe that Section 40 is unlawful and contrary to the European Convention on Human Rights, since it imposes a burden on a newspaper to pay the costs of proceedings even if it is successful, and is discriminatory and arbitrary?

Earl Attlee: There is a simple answer to that—the noble Lord should test that in the courts and test it in Europe.

Lord Pannick (CB): My Lords, I am very grateful to the noble Earl for mentioning one of the many cases over the years in press law that I have lost. I mention to noble Lords another of those cases, in the Court of Appeal in 2015, when I represented entirely unsuccessfully Mirror Group Newspapers, which sought to overturn the very substantial damages that had been awarded to individuals, some of them famous and some of them not, whose mobile phones had been hacked by journalists and whose data had been used to write articles breaching their privacy. A woman who had had a relationship with an England footballer was awarded damages of £72,500. An actress who appeared in "EastEnders" was awarded £157,000 in damages—and so on.

The reason why the courts awarded damages of that extraordinary magnitude, far more than you would get if someone deliberately ran you down and severely damaged your health, was precisely because of the factors that the noble Baroness, Lady Hollins, mentioned in opening this debate. It is about the personal nature of the intrusion and the suspicions that are engendered as to how the press obtained this information. Was it from friends or relatives who had betrayed you? It is about the very real impact that this has on your personal behaviour; it inhibits, inevitably, the communication that you have with friends and relatives. The claimants in these cases were represented by expert solicitors and by a counsel acting on a conditional fee basis, which meant that, when they won the case, MGN had to pay substantially increased costs, as well as insurance premiums. The costs—because the case related to dozens of claimants—were in the millions of pounds. Similar claims have been brought against other newspaper groups, and the noble Baroness, Lady Hollins, mentioned in her opening remarks that further proceedings are imminent.

I mention all this to emphasise that, when newspapers breach data protection laws, as they have, they have paid for it, and rightly so. Nobody who knows anything about what used to be called Fleet Street could seriously doubt that journalists and editors now take data protection seriously. They would be mad not to do so. In the past few years, editors and journalists have gone to prison for criminal offences related to breaches of data protection. Editors and journalists have lost their jobs in relation to such matters. A prominent newspaper, the *News of the World*, was closed down. Newspaper groups have paid tens of millions of pounds—perhaps more—in damages and costs. This Bill will create a powerful new administrative machinery to enforce data protection law. All that is rightly so, and I complain about none of it; it is absolutely right that the rule of law applies.

The question is whether we really need a public inquiry on this subject, which will take years to report and cost a fortune to the public purse, occupying the time of busy people who can productively be engaged on other matters. I say to the House that we do not need an inquiry to establish what happened in the past—any number of trials, criminal and civil, have examined the facts, sordid as they are—and we do not need a public inquiry to ensure higher standards of conduct in the future. An inquiry in the terms set out in the amendment of the noble Baroness, Lady Hollins, would be so broad in nature that it would impede the ability of editors and journalists to get on with the vital work of holding government and powerful private individuals and companies to account.

5.30 pm

I understand why some noble Lords focus on failures in press standards, but they should bear in mind the valuable, indeed essential, work done by the press in exposing those who abuse public office or private power—from the *Daily Mail* campaign for the prosecution of the killers of Stephen Lawrence to the *Times'* exposure of the sex abuse scandal in Rotherham.

In any event, even if noble Lords agree with none of that, this amendment is plainly premature. This Government have not yet announced whether they are to proceed with Leveson part 2, because, as the Minister told this House just before Christmas, they are receiving comments from Sir Brian Leveson himself on the responses to the consultation. When the Government arrive at a conclusion, with the benefit of Sir Brian's comments, this House will, I am sure, have a full opportunity to make its views known—and this House will indeed express its views. I cannot, for my part, understand how the noble Baroness, Lady Hollins, can think it appropriate for the House to insist today on a further inquiry when the consultation process is not yet complete and when the Government have told us that they are to set out their reasoning, informed by Sir Brian's comments. Given the time that has already elapsed, there is no conceivable urgency. I say with great respect for the noble Baroness, Lady Hollins, that her amendment is simply misconceived.

Amendment 147 by the noble Earl, Lord Attlee, would introduce a penal provision on costs that cannot be justified. To say to the press that unless they join an approved regulator they must pay the costs of a data protection claim, even if it is an unjustified claim, is simply perverse. I agree with the noble Lord, Lord Lester, who has already indicated that this would be a manifest breach of this country's obligations under the European Convention on Human Rights, because of the chilling effect that it would inevitably have on valuable investigative journalism.

I therefore say to this House that outrage at press conduct in the past—and I share much of the concern—and sympathy, which I also share, for victims such as the noble Baroness, Lady Hollins, should not lead this House to approve these unjustified amendments.

Baroness Kennedy of The Shaws (Lab): My Lords, it is such a relief to hear the noble Lord, Lord Pannick, admit to the House, as he did at the beginning of his speech, that he sometimes loses a case. In fact, even as a meagre lawyer, I enjoyed success over him on an occasion in the European Court of Justice. However, it is disingenuous of the noble Lord to say that we should wait to hear whether the Government intend to do anything about Leveson part 2. We know that that is not the intention of government. The dragging of feet on all this has made it very clear that the Government do not want to fall out with their friends in the press or to lose the editorial support they get from sections of the press. We should be very clear that it is not likely to happen with the current Government.

I have great sympathy for the noble Baroness, Lady Hollins, and what she is saying, because I share the concern that not all these lessons have been learned. There are ways in which we already see reluctance by those who are now seen as having authority to hold the press to account to take action. Therefore, I do not share the concern that this amendment is unlawful. I do not believe that premise is true and I think that it will be tested in the courts. The noble Lord, Lord Pannick, who often represents the press, may end up representing newspapers as opposed to individuals who have suffered transgressions. I support the amendment of the noble Baroness, Lady Hollins, as I have seen too much of this bad behaviour going on.

Unlike the noble Lord, Lord Pannick, I am a criminal lawyer and I have seen the ways in which the police have leaked information. I am afraid that I have also seen bad behaviour on the part of police officers in divulging information to the press. Concerns have often been raised that there may be what used to be called "a drink in it" for subverting the proper processes by which high standards are maintained. Therefore, I do not share the confidence of the noble Lord, Lord Pannick, that everything will be fine as the measure runs through. I still feel that the press has lessons to learn. I hope that we listened to what the noble Baroness, Lady Hollins, had to say.

Lord Paddick: My Lords, I declare an interest. When I was a commander in the Metropolitan Police service, my personal details—this was in breach of data protection—were secured by Mulcaire, the private detective employed by a newspaper. This was discovered by the Metropolitan Police in 2002, but I was not told about it until 2010, when the *Guardian* alerted my lawyers to the fact that this had taken place. However, in the course of what subsequently transpired, I was shown an internal memorandum of the Metropolitan Police service, which showed that in 2002 it was aware that my phone and that of the then Deputy Prime Minister had been hacked into, and it never informed me of that. Therefore, noble Lords will understand that I should declare that personal interest.

However, I want to tell the following story to the House. I went with the family of Milly Dowler to see the then Prime Minister, the then Deputy Prime Minister and the then Leader of the Opposition to talk about the family's experience. Noble Lords will recall that Milly Dowler went missing, was kidnapped and murdered, and that her family kept trying to call her mobile telephone. However, the phone relayed the message that the voicemail box for that number was full. Therefore, the family was losing hope that she might still be alive. Then they tried to phone again and found that some of the messages had been listened to. That gave them hope that she might still be alive. However, it transpired that there was room in that mailbox because journalists had hacked into her voicemail and had listened to some of the messages.

On the evening before the first of those meetings with the then Deputy Prime Minister, Nick Clegg, Milly Dowler's father was telephoned by Surrey Police to tell him and the family that Surrey Police knew in 2002 that journalists had hacked into Milly Dowler's voicemail, thereby allowing further messages to be left, as the journalists involved had called the police incident room to tell them that they had illegally hacked into the voicemail. However, it was not until nine years later and the imminent meeting with the then Prime Minister, the then Deputy Prime Minister and the then Leader of the Opposition, that the police felt obliged to tell the Dowler family that they knew from the outset that her phone had been hacked into. They did not offer any explanation for not having taken any action in relation to that illegal hacking into that phone.

These are the sorts of issues involved. This is not just about the conduct of the media. The aim of part 2 of Leveson is to examine the relationship between the police and the media and between politicians and the media, not simply the conduct of the media themselves. That is why we need part 2 of Leveson, and that is why I support Amendment 127A.

Viscount Hailsham: My Lords, I will speak briefly, both to the proposed new clause in the amendment moved by the noble Baroness and the proposed new clause moved by my noble friend.

I am against the suggestion that we should have an inquiry. I share the view of the noble Lord, Lord Pannick, that we know enough already. The facts have been canvassed time and time again, in inquiry, in criminal cases and in civil cases, and the time has now come for policy. We do not need new facts—we need a policy decision, and that is essentially a matter for government and Parliament. If we call for a further inquiry, the policy decisions will be postponed. A further point is that, if the proposed new clause is carried, the pressure will be on a judge-led inquiry. In the generality, I am against judge-led inquiries when they address matters of major general policy. Judges are good at identifying facts and deficiencies in existing legislation, but they are not well placed to address general policy issues.

Lord Cunningham of Felling (Lab): The noble Viscount said a few moments ago that we do not need an inquiry because we have all the evidence and all the facts we need. What are the Government hesitating

[Lord Cunningham of Felling]
for, then? If we have all the facts and the evidence we need, the Government must have them too. However, they are not proceeding. That is the dilemma that the House faces, and that is why I strongly support the amendment in the name of the noble Baroness, Lady Hollins.

Viscount Hailsham: But the irony is that if we have a new inquiry, we will postpone the moment when the Government come forward with a policy. The only way you will get a policy decision is to press the Government to make their policy decision, not by holding a further inquiry.

The second point I want to deal with is my noble friend's Amendment 147. I am not in support of it. First, I am against making a distinction in law between an approved and an unapproved regulator. I am bound to say that when I look at IPSO, I do not find it lacking; it seems to be a perfectly constituted and responsible regulator. I certainly do not want to make a distinction in law between Impress and IPSO. I very much hope that IPSO, which is backed by the industry, will get much greater support than it has hitherto received.

Secondly, on the issue of costs under my noble friend's amendment, I believe that an award for costs should be within the discretion of the trial judge. The consequence of this proposed new clause is to make an award against a successful defendant when the institution and carriage of the litigation was conducted by the unsuccessful plaintiff or complainant. That seems to me to fly in the face of every notion of justice I have ever encountered. I suspect that the noble Lord, Lord Lester of Herne Hill, would agree with that proposition. Therefore, I very much hope that your Lordships will not agree to this proposed new clause. I accept that my noble friend has referred to the provisos, which enables the unapproved regulator to gain the costs. However, if my noble friend will forgive me, the second of the provisos is drawn in such general and loose terms as to be unintelligible, even to the cleverest of judges.

Earl Attlee: Of course, my amendments are entirely modelled on Section 40 of the Crime and Courts Act, which Parliament passed.

Viscount Hailsham: That may be so, but Parliament makes errors, and this House is in the business of looking again at what we have done in the past. We have to ask ourselves: what is just and equitable in the context of this case? I therefore very much hope that we will not approve a new inquiry and that the proposed new clause so eloquently moved by my mentor will fail.

Lord Lipsey (Non-Afl): My Lords, I am one of those who backed the amendment of the noble Baroness, Lady Hollins, and I want to intervene briefly to make a point about the beast with which we are dealing. I refer noble Lords to the piece in today's *Times*—a newspaper at which, incidentally, 25 years ago I was deputy to the editor. The headline reads:

"Peers hijack data bill to attack free press through back door".

In today's *Times*, evidently, the facts are free but comment is sacred.

5.45 pm

There is a ruthlessness about the present press campaign which has its effect on people of the highest integrity and intelligence. I heard the remarks of the noble Viscount, Lord Hailsham, about what a wonderful organisation IPSO is. I wonder whether he has studied the Media Standards Trust critique which shows how few of the Leveson criteria that body matches up to.

I stand only to say that, when noble Lords go through the Lobbies tonight, they will have to decide which side they are on—the kind of deep and rational debate that takes place in this House or the kind of debate that thinks that,

"Peers hijack data bill to attack free press through back door",

is a contribution to public discussion and argument.

Lord Black of Brentwood (Con): My Lords, I hope that for the last time on this Bill I declare my interest as executive director of the Telegraph Media Group, and I draw attention to my other media interests in the register.

Amendment 127A, which I shall speak to first, is, as we have heard, an attempt to bring in by statute part 2 of the Leveson inquiry, but of course it is not quite Leveson 2 because this time there is no inconvenient mention of the role in the events of the past of some politicians and the police, who are noticeably absent from the scope of this amendment. So the target is four-square the press, and I believe that those who back the amendment are happy cynically to sweep everything else under the carpet.

I have four points to make. First, another inquiry is completely unnecessary because there genuinely is nothing left to unearth which has not been gone into in microscopic and comprehensive detail and been covered during the years of inquiries and investigations, as my noble friend Lord Hailsham said. Yes, bad things went on in a small number of places, but the full force of the criminal and civil law leading to prosecutions and often eye-watering amounts of compensation, as the noble Lord, Lord Pannick, said, along with rigorous judicial and parliamentary inquiry, has been brought to bear on them.

We had Leveson part 1, which cost taxpayers £5.4 million at the height of austerity and cost the core participants many tens of millions of pounds in legal costs. We should remember that Leveson had judicial powers of inquiry greater than those given even to Chilcot, who was investigating an illegal war in which hundreds of thousands of people died. We have had three exhaustive police investigations, with more people working on them than investigated the bombing at Lockerbie, in which over 200 souls died, costing the same taxpayer another £43 million. We have had three parliamentary inquiries by Select Committees in another place, one into press regulation by our own Communications Committee and one by a Joint Committee. There was a forensic investigation by the United States Department of Justice into voicemail interceptions and payments by public officials, after which it declined to prosecute. There has also been an investigation here into corporate liability in relation to data offences. After detailed consideration of that, the DPP said that no action was to be taken.

I cannot think of a comparable situation where so much has been done to get to the truth. So it is little wonder that Sir Brian Leveson himself, in concluding a ruling in the course of part 1 on 1 May 2012, questioned its value, saying that it would,

"involve yet more enormous cost (both to the public purse and the participants); it will trawl over material then more years out of date and is likely to take longer",

to complete. I agree with that.

It was said in Committee, and has been hinted at here, that one of the issues that needed to be looked at again was Operation Motorman, despite the fact that Leveson took evidence on it and made recommendations. However—this goes to the heart of the matter—that concerned journalistic activity prior to 2003, 15 years ago. Does anyone believe that going over all that material again will be in any way fruitful, especially when many of the people involved will have left the industry? Some of them have died, and at least some will have forgotten the circumstances around actions that took place at the turn of the century.

My second point is that since the events that were at the centre of Leveson 1 took place, there genuinely has been a sea change in the regulatory framework surrounding journalism and publishing, which makes an inquiry unnecessary. In the past five years, the Press Complaints Commission, of which I was once director, has been closed and IPSO put in its place. I do not think that this is the time for a debate about IPSO, but it is an organisation with real powers based in civil law, which means that it is a regulator able to extract real penalties, far removed from the conciliation service that the PCC offered. Perhaps not visible to the naked eye, IPSO has also brought about, as I know from personal experience, a huge transformation of the internal complaints handling and governance procedures of newspapers.

My noble friend Lord Attlee mentioned the arbitration scheme. He should know from checking his facts that IPSO does now offer a low-cost arbitration scheme. The claimant fee for an initial ruling is just £50—I do not think you can get much more low-cost than that—and a maximum of £100 if the full process is used.

Earl Attlee: And how many cases has it arbitrated?

Lord Black of Brentwood: The scheme has only just come in following a pilot, so we need to give it a bit of time to see whether it will take effect.

Building on the issue of public interest, my third point is that I do not believe the industry can afford the distraction of such a huge inquiry at a time when many parts of it are struggling for survival. On one level, there is the sheer cost. Leveson 1 cost the industry many tens of millions of pounds in legal fees and management time. Any follow-up inquiry of this sort would, as Sir Brian himself intimated, be even longer, even more complex in view of the time that has elapsed and even more expensive. Under the terms of the amendment, it would impact on every part of the media, including the local press and the magazine sector, which were completely cleared in Leveson 1. The amendment puts those proved innocent back in the dock. Indeed, its terms are so wide that it would even draw in the international media, such as Buzzfeed, Reuters and the Huffington Post, as well as broadcasters including the BBC. Quite apart from the cost, there is the profound distraction that it would entail for those who are seeking with great speed to change their business so that they can survive in the digital age.

The spectre of yet another inquiry is a toxic threat to a free and independent press. I have lost count of the number of times during the passage of this Bill I have heard from those who said it was appalling to suggest—which I never have—that they do not believe in press freedom; that they were champions of press freedom through and through. Maybe, but I say to them: if you will the ends, you have to will the means. Setting up this inquiry is absolutely not willing the means for the survival of the free media in this country.

The issue of tumultuous change leads me to my fourth point. This amendment points very much to the past, one long hauled over. I know that bad things went on but we should be desperately trying to point to the future. One problem with the first part of the Leveson inquiry was that it ignored the reality of the new media environment and global competition in news. The world that this amendment seeks to investigate has gone. We should be looking now at how we can support free media by working out how best to regulate the currently completely unregulated online platforms of Google and Facebook, rather than heaping yet more burdens on a part of the media that is more heavily regulated than anywhere in the western world, constantly scrutinised and buckling under serious commercial pressure. It is time to draw a halt to this and look to the challenges of the future.

I turn briefly to Amendments 147 and 148 in the name of my noble friend Lord Attlee, which attempt to bring in a version of Section 40 of the Crime and Courts Act 2013. These are deeply pernicious amendments and would, I say to my noble friend, have a destructive impact on our free press, not just national newspapers but the local press, the magazine and periodical business, and the international media. The so-called process of cost shifting, which lies at the heart of this, means that all newspapers and magazines not signed up to a state-approved regulator would be liable to pay for the other side's costs in an action for a breach of data protection, whether they win or lose the case. Because data touches on virtually every aspect of the news operation—from the genesis of a report to its ultimate archiving—a legal action relating to almost any journalistic activity could be dressed-up in a way that would take advantage of this malignant law. It would open the floodgates to hundreds of baseless claims that would put the very existence of many newspapers, particularly the local press, in grave jeopardy.

The aim of this is to use the law to blackmail—I use the term advisedly—publishers into a system of state-approved regulation. Punishing newspapers for telling the truth as a ruse to impose such controls is wholly inimical to press freedom and alien to democracy. In the current situation, the problem is even worse because the faux regulator "approved" by the Press Recognition Panel is bankrolled by the anti-press campaigner Max Mosley. My noble friend Lord Attlee asked about state control. As he knows—he and I have talked

[Lord Black of Brentwood]
about it—the Enterprise and Regulatory Reform Act 2013 gives this House the power to change the charter by a two-thirds majority. However, in many ways even that is a red herring, because Parliament can vote at any time to overturn that and change the terms of the royal charter in a way that would extend state control of the press.

Given that the publishing sector has made it clear that it will never join an approved regulator, this amendment would have the most profound impact across all journalism, but particularly on investigative reporting. It would give anyone who wanted to suppress a journalist's inquiries a blank cheque to bring a legal action, knowing that they would not have to pick up the cost. Very few publications would ever let a case get to court because of the crippling costs involved, and would either have to stop investigating the moment that a legal action was threatened or be forced to apologise for printing something that was true. This would be particularly pertinent in investigations where there could be multiple legal actions. For instance, had this provision been in place, it would have been impossible for the *Telegraph* to conduct its investigation into MPs' expenses—perhaps some Members of this House would be entirely happy about that.

For all publishers, there would be serious commercial consequences at a time when the vast majority of the industry is struggling. It is inevitable that some newspapers would go out of business as a result of just a handful of cases brought under my noble friend Lord Attlee's amendment, with disastrous consequences for the plurality of the media. I wonder whether he really wants "Attlee's Law"—as I have no doubt it would become known—to be responsible for closing newspapers, journalists losing their jobs and investigations being stopped in their tracks?

Noble Lords: No, no.

Lord Black of Brentwood: I hear noble Lords disagreeing, but I have to tell them that it is true. If you are a struggling local newspaper making barely any profit, one or two actions brought under this provision would bankrupt you.

Many other serious legal issues arise from this amendment relating to the European Convention on Human Rights, which the noble Lord, Lord Pannick, has already dealt with. It is for this reason, and all the reasons I have outlined, that Section 40 has been roundly condemned as an assault on free speech by virtually every international press freedom organisation, including Index on Censorship, the Committee to Protect Journalists, the World Association of Newspapers and the International Press Institute. It is why, rightly, the Government undertook a comprehensive consultation on whether to introduce it last year.

In closing, whatever that consultation says—and I agree that it would be quite wrong to support this amendment in the absence of the Government's response—Section 40 remains pernicious in principle and would be disastrous in practice for the free and independent media that I believe we all want to see flourish in this country. I hope my noble friend will not press his amendment.

6 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, I too oppose the amendments in this group. I want to focus particularly on Amendment 147, which would, in effect, introduce a Section 40-type penal costs provision into the present legislation. But I seek first to dispel a basic misapprehension on this issue.

Section 40 is said simply to be implementing Leveson. I suggest that it goes very substantially further than that. The relevant Leveson recommendation is recommendation 26, under the heading "Encouraging membership". The amendment deals, as does Section 40, with both the carrot and the stick, in both instances in more extreme terms than the recommendation. I shall forgo any question of the carrot—it is not necessary to discuss that; it is wrong, but it is not necessary to discuss it—but turn to the second part, the penal cost provision of recommendation 26. It reads as follows:

> "On the issue of costs, it should equally be open to a claimant to rely on failure by a newspaper to subscribe to the regulator thereby depriving him or her of access to a fair, fast and inexpensive arbitration service. Where that is the case, in the exercise of its discretion, the court could take the view that, even where the defendant is successful, absent unreasonable or vexatious conduct on the part of the claimant, it would be inappropriate for the claimant to be expected to pay the costs incurred in defending the action".

Given that recommendation, the suggestion is that the court could take the view that even where the newspaper wins, it would be inappropriate for the claimant to be ordered to pay the newspaper's costs. Critically, there is nothing there about the newspaper, even when it wins, being made to pay the unsuccessful claimant's costs.

In the provision as it is sought to be introduced, whether you look at it as Section 40 or as Amendment 147 —which is perhaps more convenient because it is in identical terms to Section 40 except in two wholly immaterial respects—subsection (3) goes way beyond that recommendation. In that instance, the court must—note the word "must" towards the end of the paragraph—award costs against the newspaper to the unsuccessful claimant unless, under this highly abstract concept in paragraph (b),

> "it is just and equitable in all the circumstances of the case to make a different award or make no award of costs".

The plain intent of that provision is to drive newspapers which will not sign up to a recognised regulator to do so by threatening that they will pay the costs, come what may, except only in a vexatious case.

Anyone who is besotted with that mismatch should look also at two other passages in the report. I shall not weary your Lordships with them now but just note that they are at paragraph 5.6 of the report, at page 1770, and paragraph 6.8, at page 1514.

I shall make one final observation on this issue. Not only did Leveson's recommendations plainly not go as far as Section 40—now the proposed Amendment 147 —but they did not win the total support of all his six assessors. Notably, the noble Baroness, Lady Chakrabarti, now the shadow Attorney-General, who was the director of Liberty at the time and one of the assessors, made plain her deep reservations about

Leveson's recommended regulatory scheme and, in particular, once it came to be established under the rubric of the royal charter.

My second and briefer point is that IPSO—the noble Lord, Lord Black, made this plain a moment ago—now has in place an arbitration scheme that is fully Leveson-compliant. As we have seen, the essential justification suggested for not awarding successful newspapers their costs in these cases but rather requiring them to pay the losing claimants is that, unlike a newspaper signing up to Impress, the claimant has not got the opportunity of a low-cost arbitration. That is now categorically no longer the case. IPSO offers just such an arbitration scheme—including, incidentally, explicitly for data protection claims. This scheme was finally introduced in November after being trialled for a year. However, it was trialled on less beneficial terms than it is now introduced on. There used to be a scheme which cost £300. Now, as the noble Lord, Lord Black, made plain, you pay £50 down and the most you can be required to pay beyond that is another £50—£100 in all. This scheme is overseen by specialist barristers and managed by CEDR, which is Europe's largest independent provider of alternative dispute resolution. There is less cause now for even the recommended possible sanction by Leveson than there used to be.

My next point is perhaps of reduced significance because of the availability of the arbitration scheme now introduced, but the Bill makes specific provision to assist a claimant in a data protection proceeding against newspapers to apply to the Information Commissioner to fund the claim. Clause 165(6)(a) makes plain that the commissioner's assistance may include,

"paying costs in connection with the proceedings".

Not only is this manifestly not the right Bill to introduce by a side-wind legislation that was originally designed for other cases under Section 40; it is the least possibly appropriate Bill in which to do so.

I am tempted to raise a number of other points but I shall not succumb to the temptation because many have been made by other noble Lords. However, with the best will in the world, this is an ill-judged group of amendments and it will do this House no credit to pass them.

Lord Lester of Herne Hill: I wonder whether I will win the sympathy of the House by saying that I am not going to make a speech. All I want to say is that I have given notice to my Chief Whip, as a cuckoo in the nest, that I cannot support these amendments and that if there is a Division I shall vote against them.

The only other point I wish to make was made by the noble Lord, Lord Black, in passing, at the conclusion of his speech, when he referred to the wider world. The rest of the free world that believes in free speech looks with amazement at these debates and thinks how on earth can we be wasting time debating this kind of thing when the press has done what it has done. With Alan Moses, a really independent Court of Appeal judge as the chair and Anne Lapping, a very independent non-lawyer, as the deputy chair of IPSO, having set up a scheme, why on earth are we wasting time in going over past history instead of letting them get on with it.

Lord Falconer of Thoroton (Lab): My Lords, I came intending to support the amendment of the noble Baroness, Lady Hollins, asking in effect for Leveson 2, and the amendment of the noble Earl, Lord Attlee, in effect introducing Section 40 for data protection. The more I have listened to the debate, the more I am absolutely convinced that both those amendments are correct.

I have found it appalling to listen to the smug reassurances of the apologists for the media that everything is now fine as far as data protection is concerned. The noble Baroness, Lady Hollins, drew our attention to the experience of the Bowles family when their son was killed in an accident. While Leveson 1 was going on—the latest moment at which it was alleged that the media had reformed—they were breaking the Bowles family's data protection rights, to publish whatever they liked.

I do not know the extent to which the media were tricking or are continuing to trick people into giving out medical records, banking information and private photographs, or taking photographs from sources they should not, or going to the police and getting information from them. I am pretty sure that it is still going on, but I do not know the extent of it. The thing that will reveal the extent of it and the extent to which media owners are involved would be Leveson 2. That is what we as politicians promised at the time. The assertion, made in particular by the noble Lords, Lord Pannick and Lord Black, and the noble Viscount, Lord Hailsham, that we should just stop now because everything in the garden is rosy flies absolutely in the face of the evidence. We would look like politicians who are continuing to collude with the media.

Viscount Hailsham: The point is not that everything is right. We accept that it is not, but the facts are already known. What now needs to happen is that the policy needs to be formulated and brought to Parliament. An inquiry would postpone the day when that could happen.

Lord Falconer of Thoroton: I disagree with what the noble Viscount, Lord Hailsham, says—namely, that the facts are already known—because the apologists are saying that everything is okay now; I do not include him as an apologist because he has a slightly different position. I point to the case of the Bowles family, which indicates that things were not okay when the first Leveson inquiry was going on. The basis on which it has been asserted by the noble Lords, Lord Pannick and Lord Black, along with others, that we should not go ahead is because everything is okay. Well, it is not.

Lord Lester of Herne Hill: I just to make something quite clear. I hope that the noble and learned Lord is not suggesting that I am saying that everything is fine.

Lord Falconer of Thoroton: This is the crux of the position. Now that it seems to be accepted that things are not okay, if that is the case, what is required is an inquiry. As I understand what is being asserted, a change is proposed in the form of Section 40 and there

[Lord Falconer of Thoroton]
are those who say that we should not make a change. I think that it is important not to be taken in by the siren song that everything is okay.

It is important that there should be a second inquiry. We promised it and we should not break that promise. I also think it would be wrong to suggest that Sir Brian Leveson is against a second inquiry. I do not know what his position is, but we should not assume that he is either in favour or against it; his views need to be canvassed. I strongly support the amendment tabled by the noble Baroness, Lady Hollins.

Lord Pannick: I am not suggesting that breaches do not occur; I am not an apologist. My position is that if and when errors are made and wrongful acts occur, the law has ample means of dealing with them. We do not set up a massive public inquiry in areas of the law or practice whenever there is a risk that wrongful acts are going to take place. My position is that we have inquired sufficiently into these matters, and to the extent that there are still wrongful things going on, the law provides perfectly adequate remedies, and indeed under this Act there will be perfectly adequate administrative procedures.

6.15 pm

Lord Falconer of Thoroton: I have two comments to make in response. First, the Leveson 2 inquiry was promised. As I understand the position of the noble Lord, Lord Pannick, now, he is saying that maybe wrongdoing is going on and it is the same as was expected before, but promising Leveson 2 was a mistake. Secondly and separately, Sir Brian Leveson found in his report that the remedies of the law, the remedies to which he referred, were open only to the wealthy. That is what he found as a provision. Therefore, the suggestion that the law provides an adequate remedy before the recommendations made by Sir Brian Leveson is, in my view, wrong. I pray in aid of that the conclusions that Sir Brian Leveson made after a full inquiry.

I turn now to the amendments tabled by the noble Earl, Lord Attlee. I strongly support them and I think that they are entirely appropriate for this Data Protection Bill because they deal with those who abuse data protection. Why should people not have protection in relation to this? I strongly disagree with the suggestion of the noble and learned Lord, Lord Brown, that this goes further than Leveson. It does not, because what Leveson said was that if a newspaper can join a body which could provide a cheap way of dealing with it and it does not, it should be liable to pay the costs unless there is good reason not to. That is precisely what the amendment does, and I say that with some added experience in relation to this. I was involved at the time when Section 40 was being drafted. It was in effect an agreed draft between the Government and their lawyers, with Mr Oliver Letwin representing the Government along with the full majesty of the Treasury Solicitor advising him. We were trying to agree an amendment that gave effect to Section 40. It was passed almost unanimously by the House of Commons and it was passed in this House as well. The suggestion that it goes further than what Leveson proposed is wrong, so I strongly support it.

Having had the benefit of all of those lawyers from the Government at the time, I also strongly disagree with the assertion by the noble Lords, Lord Pannick and Lord Lester, that this would be in breach of the Human Rights Act. It most certainly would not, and I am encouraged in that by what was said by my noble friend Lady Kennedy of The Shaws. Please do not listen to the siren song of the media. Give people the protection that everyone thought they were entitled to. It does not infringe on a free press; it simply makes sure that people like the parents of the victims of the Soham murderer do not have their data mined when there could not be any possible justification for it.

Baroness Butler-Sloss (CB): My Lords, I was not going to speak, but I feel impelled to do so. I have no time for the media. I have been libelled and I disliked the experience a great deal. But what we are being asked to provide is a remedy. They are saying that the current remedies will not do and that the remedy is an inquiry. As a judge, I have chaired a number of inquiries, and there are other former judges in this House who have done so. They are inevitably long-winded. This one would go on for a very long time, so I would ask this question: what sort of remedy would there be at the end if the inquiry is mired in a huge number of lawyers making a great deal of money out of defending all sorts of groups of people? At the end of the day we would get—what?—a report.

Lord Finkelstein (Con): My Lords, I first declare my interest as a *Times* columnist. Perhaps I may also start by thanking the noble Baroness, Lady Hollins, for the opportunity to listen to what she had to say, which it was impossible to do without regarding it as moving and passionate and a cause for reflection. It would be an insult to free debate if I did not say to the noble Baroness that listening to her has made a deep impression on me. I thank her for what she had to say.

I am afraid that I do not agree with the remedy being proposed by the noble Baroness. Perhaps I could propose a minor procedural innovation, which is that before people go through the Division Lobbies and vote for a further inquiry, they might be required to provide evidence that they have read all of the previous one. It ran to 2,000 pages, with 115 pages on data protection, which people may not have come across because they started on page 997. The noble Lord, Lord Paddick, suggested that a second inquiry which delved into the relationship between politicians among others and the press was a good idea. That inquiry was also conducted by Leveson. I know that because I was in it. It was set out in the third volume, and not many people who were not working in the legal departments of newspapers mentioned it to me.

I understand the comment from the noble Lord, Lord Lipsey, about the *Times*' comments this morning. It is the normal habit of columnists to say, "I didn't write the headline", but in this case I am happy to stand behind it. Of course I understand that nothing would occur less to noble friends and noble Lords than to attack free speech—nobody thinks that that is what they are doing, and de jure they can claim that it is not what they are doing—but please do not have the impression that, de facto, it makes no difference to the

free publication of criticism and newspapers if we have yet another inquiry. I know that it is not what the motivation is, but it is effectively harassment to continue to ask the same questions and have inquiries into the same issues. We have heard many moving examples that are covered by two things. They were either raised by the Leveson inquiry or they are capable of being dealt with by criminal, political or arbitration solutions. The idea of having another inquiry therefore justifies how the *Times* put it this morning.

Lord McNally (LD): My Lords, I am not a lawyer or journalist. If I was to describe myself as anything it is a jobbing politician. But each and every one of us in this House has to make their decision as a jobbing politician. Quite frankly, and with the utmost possible respect—I know that is what you always say when you are about to be rude—having listened to the lawyers, my head spins. That is why, in the end, we have to make a political judgment.

The truth is, we are where we are because the press that the noble Lord, Lord Black, speaks for—I make no criticism of that—decided that they would not co-operate. We could have had a working system backed by a royal charter from the beginning. Those of good will on all sides could have made that effective. It was the decision of the noble Lord and his friends not to make it work. Everything we have had since then flows from that determination that they would not make the legislation, which passed through both Houses with massive majorities, work. That is why we are in the position we are in now.

We then have to add to that the fact that, sadly, the Conservatives decided to go back on the pledge that the Prime Minister of the day made to the victims that they would have the full second inquiry. They put it into their manifesto, which, noble Lords may have noticed, did not get the approval that they would then claim as a strength in this House.

The position we have now is that the consultation is in the works. Lord Leveson, who must be a glutton for punishment, has said that he wants to look at not only the conclusions, but the submissions and will make positions of his own. What worries me is that, unless we do something tonight to send this matter forward to the other place, it will be taken out of the hands of Parliament. It is a rough old way of doing it, but by passing this amendment it will go to the Commons at a time when the Commons will be cognisant of the amendment as an opinion of the House of Lords, the outcome of the consultation and the opinions of Lord Leveson. That strengthens the position of Matt Hancock, the new Secretary of State—an appointment I very much welcome—but we all know how it works: Ministers in the department may be very willing to give assurances that we will have an inquiry somewhere down the line, but then they will get a call from No. 10 saying, "You can't: you won't do this". We have to strengthen the hand of Ministers who want to carry this through to a proper and honourable conclusion.

We have again heard all the usual arguments. There is no threat of state control of the press. I say to the noble Lord, Finkelstein, to look again at that headline and see whether he is still proud of it. Another Lord Attlee once said he only read one newspaper, the *Times*, and that was for the cricket scores. I am not sure he would trust the cricket scores these days.

One pertinent item of briefing noble Lords will have had, and to which a number of Members have alluded, was in the rather shrill briefing paper from the News Media Association, which says that,

"the industry faces acute challenge from global digital platforms which reap commercial rewards from the news industry's investments, yet invest nothing in news content themselves and are treated as mere conduits, with freedom from the responsibilities and liabilities of publishers".

As the noble and learned Lord said, that is the real challenge to the press. The noble Lord is diverting and losing friends by this obstinate refusal to build the strength that would come from royal charter-approved press regulation. I know that he worked with the PCC, but this is not a 10-year problem. For the last 30 years, we have had this problem that press regulation by itself has never carried credibility. It did not carry it in his day, which is why they got rid of it. If I can remember rightly, they got rid of the one before that in the midst of a scandal. They will probably get rid of IPSO when the next scandal comes along, because it will not work.

I suggest that we strengthen the hands of Ministers by passing these amendments to make sure that, when it goes to the Commons, there is an opportunity in the light of all the facts to make a fully informed decision. I was one of the Ministers who signed the royal charter. I can assure the House that for both Conservative and Liberal Democrat Ministers—we were in full consultation with the Opposition at that time—the one thing we wanted to avoid was any sniff or smell of state regulation. The real intention was to protect the press, not just the press owners. My belief is that, if they had followed through on the royal charter and had a proper regulator, it would protect individual journalists. I always remember during another scandal a very senior member of the *Times* had just rewritten their regulations yet again. I said, "What if the *Daily Mail* scooped you on something that you decided was prevented by your new charter?" He said, "Rupert would fire me". It is that that we want to protect individual journalists and their integrity from.

This would be a step forward. It would keep the political debate going in the place where it needs to be made—the House of Commons. We should make sure that we vote as politicians, thinking about the reality of it. All my life in politics I have made judgments on things by looking around and seeing who was smiling. If noble Lords defeat these amendments, those who will be smiling are those who have done most damage to the press by what they did while in charge of the press. Those who will be in despair are those individual citizens who have not seen their privacy or civil liberties protected. The House would feel ashamed of itself.

6.30 pm

Lord Stevenson of Balmacara: My Lords, I sense that the House wishes to move on, to hear from the Minister and move to the inevitable vote, which I think would be a good thing for all of us. Therefore I will not speak at length. We have had a really

[Lord Stevenson of Balmacara]
important debate today, ranging from the deeply personal to the high realms of public policy, and it is very hard to find a balancing point at which we might, as the noble Lord, Lord McNally, has just said, actually find a reason for dividing on the various issues. It is complicated and multilayered. It is also time-sensitive and there are very inconvenient issues in the way. However, one can dig down a little and start with the fact that the Bill, as I have always said and will continue to say, is not the right Bill to solve all the problems in relation to press regulation in the future. It is a Bill about data protection and although it has elements that obviously bear on everything we have been saying today and in the previous debates around the need to balance the rights to privacy against those of freedom of expression, it is not a complete picture and we should not think it is.

It is important that we learn our lessons and move forward. We have an existing framework, set out in the Data Processing Act 1998. It has worked well; it has been said that it will work well in future, and the Bill establishes that again as the basic understanding on which we operate. I welcome that, but we are uncertain about how the issues that were raised between 2010 and 2013, the period that led to Leveson 1, are going to be resolved in the Bill—maybe they cannot be. They include the need to ensure that, for all time, there is an effective redress mechanism for those affected by illegality and bad culture in the press, and that we should understand and learn the lessons of what has happened in the past. We certainly have a lot of information but I do not think we have a full understanding of it all.

As has been said by a number of noble Lords, we must anticipate changes that are in train for the new media, the media sources of information and news and the changes in consumption. We have to explore—this is really important—how we sustain our huge tradition of quality journalism without which this democracy would be a shadow of its current self. My noble and learned friend Lord Falconer, in a very powerful speech, said we need to go back and rethink what we were thinking at the time Leveson was set up, the promises that were made and the impact it will have on the country if we do not deliver on those promises. We promised the completion of the Leveson inquiry. Whether it is Leveson 2 or another inquiry is a lesser point than the need to honour that promise. Too many people are relying on it, too many people will be upset if it does not happen and we will all be the losers.

The noble Viscount, Lord Hailsham, said that this is really a policy issue, not an issue around data processing: noble Lords will have understood from what I said earlier that I agree with him. The problem is that we do not control policy—we are unable to put any pressure on that. The victims do not control policy. The Cross-Benchers and Liberal Democrats do not. The Government control policy but successive Governments have seemed unable to move forward. I happen to think, from private conversations, that a lot more unites us on this issue than divides us across this Dispatch Box.

I would welcome some words from the Minister explaining precisely what will be the way forward. However, I do not think he will be able to do that, for all the reasons that have been given about the inconvenience of timing, the difficulty about cutting across other measures that are in place and the need to think through some implications. I am sympathetic, but the problem is that we need action; we need to move this forward, and the only power we have is to put an inconvenient roadblock in the current thinking. That is why I support the amendment in the name of the noble Baroness, Lady Hollins, and I will support—although I think that they are probably not the whole story—the amendments in the name of the noble Earl, Lord Attlee. It is important that the Government own up to the fact that this is a problem of their own making, show that they understand the issues and take action.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, the Government recognise that there is great deal of passion and genuine concern on all sides of the debate and on all sides of the House on these matters. I am obliged to the noble Baroness, Lady Hollins, for the passionate way in which she advanced her argument on these amendments, and also to the noble Earl, Lord Attlee. Casting my mind back to my limited experience in government—and limited it is—I am slightly perplexed. Usually, Government are accused of seeking to avoid issues or hard decisions and of kicking matters into the long grass by proposing an inquiry. For me, it is a novelty that the matter should be reversed in this fashion. Indeed, I note that a number of noble Lords have made the same observation in various ways in the course of this debate. For us, it is a matter of concern that we should move forward and look at how we can maintain a suitable, appropriate and respectable media for this country, but also the freedom of that media, which underpins our democracy.

It is appropriate to notice that the media landscape has changed significantly since the Leveson inquiry was set up. We have witnessed the completion of three detailed police investigations, extensive reforms to policing practice and significant changes to press self-regulation, which have moved on even further in the recent past, with the changes to IPSO. Of course, we have seen that civil remedies, civil proceedings, provide an effective route for parties, particularly in the context of litigation where conditional fee agreements are available. The Government published a consultation in November 2016 to look at whether part 2 of the Leveson inquiry was still appropriate and, indeed, proportionate and in the public interest.

I note that date, November 2016, because one noble Lord referred to the delay. I just make the point, which I have made before, that progress on that consultation was delayed because the Secretary of State was subject to an application for judicial review with respect to the consultation process. It was not a case of the Government trying to delay that process; we were really quite anxious to bring it forward. Once we were able to proceed with that consultation process, we received more than 174,000 responses. That in itself demonstrates the depth and strength of public feeling on this issue.

We are currently consulting with Sir Brian Leveson as the chair of the inquiry. Sir Brian has asked to see the results of the consultation, along with individual responses to the consultation that were submitted by core participants in the Leveson inquiry. I notice that

the noble and learned Lord, Lord Falconer, observed that Sir Brian's views need to be canvassed. I entirely agree: that is what we are in the process of doing at the present time. It is not only right that his views should be canvassed in this context, it is actually necessary. The Leveson inquiry has not been terminated; it proceeds under the Inquiries Act 2005 and it cannot be brought to an end until the Government have formally consulted Sir Brian and considered his comments with an open mind on how to proceed further. That consultation is in train. When Sir Brian has shared his formal views with us, we will look to publish the Government's response to the consultation. It would be our intention, subject to Sir Brian's views, to publish his response at that time as well, in order that that can be in the public domain.

Amendment 127A in the name of the noble Baroness, Lady Hollins, assumes that the existing inquiry will be brought to an end, but, as I say, that decision has not—indeed cannot—be taken at this stage. If, for example, Sir Brian produces compelling reasons for proceeding with part 2 of the inquiry in some shape or form, the Government would have to give reasonable consideration to those representations and will do so. However, we clearly do not need two public inquiries going on at the same time into the same issues: that is where we would end up, on one view of this process. We have to take events in their proper order and this amendment is plainly not in its proper order; it is plainly premature and cuts across the present statutory process that is being carried on pursuant to the Inquiries Act 2005.

However, I emphasise that the Government are determined to address the challenges of the new media landscape in which we all live—not just the obvious printed media but the digital media and the issues that turn on that. We are in the process of developing a digital charter to ensure that new technologies work for the benefit of everyone, with rules and protections in place to help keep people safe online and ensure that personal information is used appropriately. We are also working to deliver on a commitment to ensure a sustainable business model for high-quality media online. Again, that underpins freedom of expression and our democratic way of life.

These are matters of active consideration for the Government. It is in these circumstances that I emphasise that the noble Baroness's amendment is not appropriate at the present time and would simply lead to confusion in this already difficult landscape. Let us move on: let us complete the process in which we are currently engaged; let us receive Sir Brian's representations with regard to the consultation process; let the Government make a decision by way of their response to that consultation; let us look at it—the idea that it would not be examined in this House is almost mythical, to be perfectly candid. Of course it will come under scrutiny in this House. I would be amazed if it were simply to pass unnoticed in the night. There can be no question at all of that happening.

Turning briefly to Amendments 147 and 148, again, I recognise that these are modelled on Section 40 of the Crime and Courts Act 2013 and I recognise that Section 40, and press regulation more generally, is a matter that people have incredibly strong—and diverse and conflicting—opinions about. I understand and appreciate the work that the noble Baroness, Lady Hollins, has done in this area and I appreciate her own personal exposure to the difficulties that have emerged in the past with regard to the abuse and misuse of personal data. Again, I reassure noble Lords that the Government are firmly committed to ensuring that the sort of behaviour that led to the Leveson inquiry never happens again. We are determined to address that.

However, we cannot ignore the various concerns that have been raised regarding Section 40. I am not going to go into the issue of convention compliance or any technical issues about that; nor will I elaborate upon the point that Section 40 does, albeit by agreement between various parties, go further than the actual recommendations in Lord Justice Leveson's original report. Again, that is why the Government have issued their consultation, which will look, among other things, at Section 40 of the 2013 Act. That matter will be addressed. As I say, the Government will publish their response to the consultation shortly. When I use a term such as "shortly" I see some rolling of eyes but let me be clear: the response to the consultation will await the opportunity for Sir Brian to make his own submissions. We will then give due consideration to those, as we will to the 174,000 responses to the consultation.

We understand the serious nature of the matter before us and it will be fully addressed but we do not believe that at this time it is appropriate to advance a provision similar to Section 40 but only in relation to data protection. There is a much wider issue at stake here and that is the issue that needs to be properly addressed and bottomed out. At the end of the day it would not be appropriate simply to carve out one provision on data protection for the purposes of this Bill in order to replicate the sorts of provisions that we see in Section 40 of the 2013 Act.

Of course we have to cast our minds to the abuses of the past but if we are going to make effective policy we have to look to the future and determine how the balance of interests is going to be achieved between the right to data protection, the right to privacy and the need to maintain a free and vibrant media and free expression. These amendments cut across the proper process that we are now following regarding part 2 of the Leveson inquiry and Section 40 of the 2013 Act. That work is ongoing. Of course we are determined to maintain that work and to bring it to a conclusion. This is not the time or the mechanism by which to try to address these issues. I fear that doing so would complicate an already complex picture. I urge noble Lords to withdraw or not move their amendments.

6.45 pm

Baroness Hollins: My Lords, I am grateful to the Minister for his thoughtful response and to noble Lords who have spoken. I was accused of bullying the press during the last debate on this Bill in December, and of harassment today—astonishing accusations under the circumstances. These amendments are designed precisely to provide access to justice and protection from the real bullies—the corporate publishers, the wealthy proprietors, their editors and their well-paid lawyers. Victims have to be psychologically very robust to take a case to court and to take on these bullies, and most choose not to. My family chose not to.

[Baroness Hollins]

These amendments are about providing accountability and curbing the abuse of power through understanding the extent of the data breaches that have taken place, and I believe—and I am not alone in believing—that we have seen only the tip of the iceberg. Journalist whistleblowers speaking to Members of your Lordships' House before Christmas gave us good evidence that data breaches continue.

To the noble Lord, Lord Pannick, I say that if newspapers took data breaches seriously they would be clamouring for the Leveson inquiry to be finished, to get to the bottom of it. I would ask: why have the Mirror Group and other newspaper groups been trying to cover up for so long if they are committed to reform? If Sir Brian Leveson were to advise that part 2 is not needed, it would be easy enough for this clause to be removed later.

I am sure that we are united in wanting high-quality news provision. There are many challenges to achieving this, whether in print or online. With no disrespect to the Minister, I suggest that my Amendment 127A provides just the incentive the Government need to focus their attention on unfinished business from the Leveson inquiry, as well as the serious longer-term issues mentioned in the debate. It would require—encourage—the Government to proceed with a public inquiry into data protection breaches by the media, whether this one or the existing part 2 of Leveson. It is mildly insulting to be told that my amendment is premature. Frankly, the Government have had long enough to think.

I spoke briefly earlier about some of the personal consequences of data theft for me and my family, and I want to bring your Lordships' House back to a consideration of the victims. Nothing prepared my family for the media frenzy that followed my daughter's life-changing injury, and it continued for months. The relentless intrusion, stalking and data stealing by the press was a life-changing experience for me. I once said that it was worse than adjusting to my daughter's injury. Even 12 years later, new evidence is emerging about the probable theft of my daughter's medical records. My eyes were opened to inaccurate, corrupt and illegal practice and yet the public still believe what they read. From the comments made by some noble Lords today, I sense continuing ignorance about the current low standards in some publications. It is very difficult to believe. I found it hard to believe what happened to me and what I see still happening to people today. It is hard to believe that it is really happening.

The Minister promises serious future attention. This is a Government whose intention was laid out in their election manifesto: to abandon part 2 of the Leveson inquiry, which could have been well under way, and thus to abandon the victims of press abuse. The terms of the Leveson inquiry were established by Parliament for good reasons and they are as relevant today as they were six years ago. Leveson part 2 is overdue and it should begin without delay. It is an inquiry begun by government and delayed by government, hence the purpose of Amendment 127A.

Perhaps I could end by reflecting on the last time a Government failed to stand up to the power of the press. The Prime Minister at the time, Sir John Major, admitted to Sir Brian Leveson that it was a missed opportunity. We must not allow it to be missed again. Parliament could provide a little extra encouragement and support to government by agreeing to my amendment today. I wish to test the opinion of the House.

6.50 pm

Division on Amendment 127A

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Amendment 127A agreed.

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7.04 pm

Clause 138: Information notices: restrictions

Amendment 128 not moved.

Clause 141: Assessment notices: restrictions

Amendment 129 not moved.

Clause 142: Enforcement notices

Amendments 130 and 131

Moved by ***Lord Ashton of Hyde***

130: Clause 142, page 79, line 2, at end insert "to comply with the data protection legislation"

131: Clause 142, page 79, line 3, leave out subsection (9)

Amendments 130 and 131 agreed.

Clause 145: Enforcement notices: restrictions

Amendment 132 not moved.

Clause 148: Penalty notices

Amendments 133 to 136

Moved by ***Lord Ashton of Hyde***

133: Clause 148, page 82, line 40, after "failures" insert "to comply with the data protection legislation"

134: Clause 148, page 82, line 41, leave out paragraph (b) and insert—

"(b) provide for the maximum penalty that may be imposed in relation to such failures to be either the standard maximum amount or the higher maximum amount."

135: Clause 148, page 82, line 42, leave out subsection (6)

136: Clause 148, page 82, line 48, at end insert—

"( ) In this section, "higher maximum amount" and "standard maximum amount" have the same meaning as in section 150 ."

Amendments 133 to 136 agreed.

Clause 149: Penalty notices: restrictions

Amendment 137 not moved.

Clause 152: Amount of penalties: supplementary

Amendment 138

Moved by ***Lord Ashton of Hyde***

138: Clause 152, page 84, line 40, leave out subsection (3)

Amendment 138 agreed.

Clause 153: Guidance about regulatory action

Amendments 139 to 143

Moved by ***Lord Ashton of Hyde***

139: Clause 153, page 85, line 27, leave out "prepared" and insert "produced"

140: Clause 153, page 85, line 42, leave out "the guidance" and insert "guidance produced under this section"

141: Clause 153, page 85, line 44, leave out "publishing" and insert "producing"

142: Clause 153, page 86, line 1, at end insert—

"(7A) Section (Approval of first guidance about regulatory action) applies in relation to the first guidance under subsection (1)."

143: Clause 153, page 86, line 2, after "for" insert "other"

Amendments 139 to 143 agreed.

Amendment 144

Moved by ***Lord Ashton of Hyde***

144: After Clause 153, insert the following new Clause—

"Approval of first guidance about regulatory action

(1) When the first guidance is produced under section 153(1)—

(a) the Commissioner must submit the final version to the Secretary of State, and

(b) the Secretary of State must lay the guidance before Parliament.

(2) If, within the 40-day period, either House of Parliament resolves not to approve the guidance—

(a) the Commissioner must not issue the guidance, and

(b) the Commissioner must produce another version of the guidance (and this section applies to that version).

(3) If, within the 40-day period, no such resolution is made—

(a) the Commissioner must issue the guidance, and

(b) the guidance comes into force at the end of the period of 21 days beginning with the day on which it is issued.

(4) Nothing in subsection (2)(a) prevents another version of the guidance being laid before Parliament.

(5) In this section, "the 40-day period" means—

(a) if the guidance is laid before both Houses of Parliament on the same day, the period of 40 days beginning with that day, or

(b) if the guidance is laid before the Houses of Parliament on different days, the period of 40 days beginning with the later of those days.

(6) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses of Parliament are adjourned for more than 4 days."

Amendment 144 agreed.

Clause 159: Compensation for contravention of the GDPR

Amendment 145

Moved by ***Lord Ashton of Hyde***

145: Clause 159, page 89, line 15, leave out from "compensation" to end of line 16 and insert "for material or non-material damage), "non-material damage" includes distress"

Amendment 145 agreed.

Clause 160: Compensation for contravention of other data protection legislation

Amendment 146

Moved by ***Lord Ashton of Hyde***

146: Clause 160, page 90, line 3, leave out from "loss" to end of line 4 and insert "and damage not involving financial loss, such as distress"

Amendment 146 agreed.

Amendment 147

Moved by ***Earl Attlee***

147: After Clause 160, insert the following new Clause—

"Publishers of news-related material: damages and costs

(1) This section applies where—

(a) a relevant claim for breach of the data protection legislation is made against a person ("the defendant"),

(b) the defendant was a relevant publisher at the material time, and

(c) the claim is related to the publication of news-related material.

(2) If the defendant was a member of an approved regulator at the time when the claim was commenced (or was unable to be a member at that time for reasons beyond the defendant's control or it would have been unreasonable in the circumstances for the defendant to have been a member at that time), the court must not award costs against the defendant unless satisfied that—

(a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator, or

(b) it is just and equitable in all the circumstances of the case to award costs against the defendant.

(3) If the defendant was not a member of an approved regulator at the time when the claim was commenced (but would have been able to be a member at that time and it would have been reasonable in the circumstances for the defendant to have been a member at that time), the court must award costs against the defendant unless satisfied that—

(a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator (had the defendant been a member), or

(b) it is just and equitable in all the circumstances of the case to make a different award of costs or make no award of costs.

(5) This section is not to be read as limiting any power to make rules of court.

(6) This section does not apply until such time as a body is first recognised as an approved regulator."

Earl Attlee: My Lords, I am extremely grateful to all noble Lords who have contributed to these exceptionally important and good-natured debates. It may be helpful to your Lordships if I say that I do not propose to move Amendment 215, which is later in the Marshalled List, but I shall move Amendment 216.

I know that I enjoy considerable support around the House, but we need to be sure that we are doing the right thing in sending this matter to the House of Commons. That is why contrary voices and cautious voices are welcome. I am not convinced that my noble friend Lord Black is correct in claiming that these amendments will result in state regulation of the media and the press. He is correct in stating that the royal charter can be changed, but it requires a two-thirds majority in the UK Parliament, including in your Lordships' House. The most important point is that it requires the unanimous approval of the press recognition panel, not to mention the Scottish Parliament.

As my noble friend recognises, the reality is that it would be far easier to insert some new primary legislation to deal with a perceived problem in the future. That would be rather more difficult to get through Parliament if we already had a good system of independent press regulation in place. Sir Brian Leveson considered these arguments and many more from press representatives, and he was clear in his view that only the recognition system proposed in his report can provide a regulator that is genuinely independent of politicians and the press. Sir Brian said that the incentives I propose are necessary, and I am sure he would not describe them as blackmail. I am at one with my noble friend about the need for a genuinely free press, and I honestly believe that my amendments help.

My other point about so-called state regulation is this: there is already state regulation of the press by means of the courts. Judges are appointed by the state and their level of remuneration, which needs looking at, is ultimately approved by the Prime Minister. A multimillionaire can prevent publication by threatening a publisher with court action with unsustainable and uncertain legal costs. These amendments, which are similar to Section 40, can protect publishers while also providing the public with the protection from press abuse that they need and deserve. I hope that the House, when it considers this amendment, will think of victims who were left powerless after some newspapers, in the words of Sir Brian Leveson,

"wreaked havoc in the lives of ordinary people".

I hope newspapers will be encouraged to join a recognised regulator to give their own journalism the protections this cost-shifting provision provides while also ensuring that their readerships are similarly protected. I beg to move.

Lord Finkelstein: My Lords, I wanted to ask—

Noble Lords: No!

Lord Bassam of Brighton (Lab): We have had the debate already. We should now move to the vote.

Lord Finkelstein: I am just asking a question, although I thank the noble Lord for his advice. There is a consequent question, subject to the vote we have just

[LORD FINKELSTEIN]
had, that I think changes the situation. I just wanted to have my noble friend Lord Attlee's view—

Noble Lords: No.

Earl Attlee: My Lords, my noble friend is in order.

Lord Finkelstein: What would my noble friend's reaction be if the inquiry that we have just voted for determined that the proposal that he has just made is a foolish one?

Earl Attlee: My Lords, the answer to that question is simple, and applies to Section 40. If the Government determine that Section 40 is not a good idea, then they should repeal Section 40 by means of an Act of Parliament. They could do the same if my amendment is agreed to.

7.10 pm

Division on Amendment 147

Contents 217; Not-Contents 200.

Amendment 147 agreed.

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7.22 pm

Amendment 148 agreed.

Clause 161: Unlawful obtaining etc of personal data

Amendments 149 and 150

Moved by ***Lord Ashton of Hyde***

149: Clause 161, page 90, line 18, after "court" insert "or tribunal"

150: Clause 161, page 90, line 28, at end insert ", or

( ) the person acted—

(i) for the special purposes,

(ii) with a view to the publication by a person of any journalistic, academic, artistic or literary material, and

(iii) in the reasonable belief that in the particular circumstances the obtaining, disclosing, procuring or retaining was justified as being in the public interest."

Amendments 149 and 150 agreed.

Amendment 151 had been withdrawn from the Marshalled List.

House resumed. Report to begin again not before 8.23 pm.

Criminal Justice (Scotland) Act 2016 (Consequential Provisions) Order 2017

Motion to Approve

7.23 pm

Moved by ***Lord Duncan of Springbank***

That the draft Order laid before the House on 13 September 2017 be approved.

Considered in Grand Committee on 29 November 2017.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): My Lords, the order before the House has been made to ensure that the policy set out in the Criminal Justice (Scotland) Act 2016 can be fully implemented.

[Lord Duncan of Springbank]

That Act contains a number of provisions which arise from Lord Carloway's review of Scottish criminal law and practice. These include reforms of arrest and custody laws designed to provide flexibility for police in conducting investigations while ensuring fairness for suspects. It will also allow suspects access to a lawyer whether or not they are to be interviewed by the police. In addition, the Act specifically states that the police have a duty not to deprive people of their liberty unnecessarily.

As a consequence of some of these measures it is necessary either to amend the law elsewhere in the United Kingdom or to make provision in relation to Scotland, where the reforms apply to reserved matters. Making such amendments is not within the competence of the Scottish Parliament, so it is necessary for this order to be laid before the United Kingdom Parliament. It is made under Section 104 of the Scotland Act 1998, which allows the UK Government to make legislative changes which are necessary or expedient in consequence of an Act of the Scottish Parliament.

The order makes provisions about arrests effected both in Scotland, and outside Scotland, in connection with crimes committed in Scotland and the investigation of Scots law crimes and extradition matters in Scotland. The draft order was previously considered in Grand Committee on 29 November. At that time, the noble Lord, Lord Foulkes of Cumnock, raised some concerns. Specifically, he was troubled by the impending merger of the British Transport Police with Police Scotland—a position I might add that was shared by many in this House. The noble Lord declared the move to be,

"dangerous, reckless and ought to be stopped".—[*Official Report*, 29/11/17; col. GC 9.]

That brings us to the amendment this evening. There is always a danger in seeking to anticipate the remarks of the noble Lord, Lord Foulkes, before he has made them, but it is important to recognise that while this order touches on the British Transport Police tangentially, it is not its principal focus. In so far as the British Transport Police operates across the United Kingdom, the order will have no impact whatever on the ongoing merger of the policing of Scottish railways. It is for that reason I beg to move.

Amendment to the Motion

Moved by ***Lord Foulkes of Cumnock***

At end to insert "but that this House regrets that the draft Order includes provisions relating to the British Transport Police; and calls upon Her Majesty's Government to review the operation of those provisions in the light of concerns that incorporating British Transport Police into Police Scotland will reduce operational effectiveness."

Lord Foulkes of Cumnock (Lab): My Lords, it is a great pleasure for me to move this amendment. When the Minister said that the merger was,

"dangerous, reckless and ought to be stopped",

I thought he was going to make my speech for me, which would have been unusual—and unusually kind as well. He rightly said on the actual specifics of the order that, if we were to vote against it, it would not necessarily achieve what I want to achieve. What I want to achieve can be achieved using this debate as a lever, and an opportunity to put pressure on the Minister. I shall come to that in a moment. It is a really important and urgent issue, which is why I welcome debating it on the Floor of the House.

What I am urging is not, as the Scottish Transport Minister has mischievously been claiming, that the devolution of the British Transport Police should be reversed totally. What I want to argue and press is that there should be an agreement between the Scottish Government and the UK Government on the form that devolution should take. There is great and growing concern, as the Minister and others have acknowledged, about the plan to integrate the British Transport Police in Scotland into Police Scotland. It would be only the Scottish part of the British Transport Police that is integrated into another force. It obviously would not happen in England.

Quite apart from the current operational problems at Police Scotland, which no doubt others will touch on, Her Majesty's Inspectorate of Constabulary has said that no business case has been made for the merger. The Association of Retired British Transport Police Officers has written to me expressing concern about the pension implications. Those noble Lords who have had the opportunity to read the *Scotsman* will have seen that around two-thirds of British Transport Police officers have said that they are unsure whether they will transfer to Police Scotland if the merger goes ahead. That would undermine the whole position and really create problems.

In the consultation on the proposed merger carried out by the Scottish Government, a large majority of respondents opposed it. But that has been totally ignored by the Scottish Government. When the Scottish Parliament Justice Committee considered this last year, both the Labour and Tory Members—there were no Liberal Democrat Members on the Committee—opposed the amalgamation, but it was pushed through by the SNP majority. When it came to the Scottish Parliament itself, Labour, Tory and Liberal Democrat opposed it but, again, with their friends the Greens the SNP Government pushed it through.

7.30 pm

But over the past few months, more and more concerns have been raised about the implications of a merger. Some of the British Transport Police's central services for the whole of the United Kingdom are located in Scotland. What would happen to them if there were a merger with Police Scotland is not clear.

There are only two specialist counterterrorist forces in the whole of the United Kingdom: the Metropolitan Police and the British Transport Police. Both now provide support to Police Scotland, and that works well. As we know only too well, sadly, terrorists know no boundaries, in the UK or elsewhere, so anti-terror forces need to work across the boundaries. The merger would jeopardise an effective fight against terrorism.

I have also discussed this with Manuel Cortes, the general secretary of the Transport Salaried Staffs' Association. That association represents all the support

staff in the British Transport Police, who are totally opposed to the merger. He said to me, and he has allowed me to quote him:

"Members both North and South of the border opposed the merger. Our Number 1 priority is the safety of passengers which would be jeopardised and consequently we will not sit quietly by if this merger is pushed through".

Those are strong words from the union chief.

There is a sensible alternative—a compromise, if you like—which would both satisfy genuine devolution desires on the one hand and retain operational effectiveness on the other. The British Transport Police could remain intact, but the chief constable would report to the Scottish Parliament and to Scottish Government Ministers on all operations in Scotland and all issues affecting Scotland. They would have a say in everything happening in Scotland without having to break up the British Transport Police.

The purpose of this debate is to ask the Secretary of State for Scotland—through the Minister of State, whom I welcome to his post; he has been really helpful on this matter—to go to the Scottish Government and ask them to accept this sensible and reasonable option, which is widely supported, and which I hope will be supported widely in this House.

Some, including the Minister, may be concerned what leverage he has as the legislation has progressed so far. I understand that. The answer is simple. The integration cannot progress unless the Secretary of State for Transport agrees to transfer the assets of the British Transport Police in Scotland to the Scottish Government. I ask the Minister to get the Transport Secretary to say that he is reluctant to transfer these assets unless there is a sensible arrangement for devolution, along the lines that I have suggested.

That would be a bold action, but it is necessary if we are to stop the break-up of a successful policing organisation for party-political dogma. The merger is opposed by the most powerful Conservative politician in the whole of the United Kingdom: Ruth Davidson. I hope that will give the Minister the necessary courage to act.

I am minded to press this to a vote and to ask my colleagues on all sides to vote against the order. However, if the Minister is able to give the House a clear assurance that he will take this matter up vigorously with the Scottish Government, I will not press it, and he will have done the House and, even more importantly, the British Transport Police a great service.

Lord Wallace of Tankerness (LD): My Lords, with characteristic vigour, the noble Lord, Lord Foulkes of Cumnock, has laid out the many misgivings that have been expressed about the proposed merger—it is not even a merger but a dismemberment of the British Transport Police, with the Scottish part of it being put into Police Scotland. Many of the arguments were rehearsed when your Lordships' House debated the devolution of legislative competence for dealing with the policing of railways and railway premises during the passage of the Scotland Act back in 2016.

Before coming back to that, perhaps I may do the unforgivable and talk about what the order and the amendment say. As the noble Lord, Lord Duncan, indicated, the order takes forward the response by the Scottish Parliament to a decision of the Supreme Court on which the noble and learned Lord, Lord Hope of Craighead, sat in the Cadder case. I have a vivid memory of the time, because the Scottish Parliament had to pass emergency legislation immediately to address the breach of the European Convention on Human Rights that had been identified by the Supreme Court. At the time, as Advocate-General for Scotland, I had to take careful note of what was going on in the Scottish Parliament. We had a TV monitor of the parliamentary proceedings in my office because we had to decide very quickly whether we wished to make reference to the Supreme Court if we thought that any Bill had gone beyond the legislative competence of the Scottish Parliament and whether any amendments being passed right up to the last minute would change that. It was open to me under Section 33(3) of the Scotland Act 1998 to indicate to the Presiding Officer that I would not use the four weeks available to consider whether there should be a reference to the Supreme Court and to indicate that I would not refer it. At that point, with concurrence from the Attorney-General and the Lord Advocate, the Bill could go immediately for Royal Assent, and that is what happened.

It was always anticipated that there would have to be further legislation, which came along six years later, but with the benefit of a review undertaken by the then Lord Justice Clerk, now Lord Justice General Carloway. It is the provisions of that 2016 Act—which, I should point out, received Royal Assent two months before the Scotland Act 2016, to put into perspective what we are debating today—that give rise to the order. As the Minister said in his opening remarks, many of the provisions are to increase the rights of suspects held in detention and deal with the powers of police. Because the Scottish Parliament cannot legislate for police outside Scotland in relation to an arrest made in respect of a crime committed in Scotland, or make legislative provision for the British Transport Police—at least, it could not in 2016—the order is necessary to ensure that if the British Transport Police, for example, arrest someone, that person should have the same rights as if they were arrested by a constable of Police Scotland.

That is perfectly proper. These are the provisions of the order that relate to the British Transport Police, along with a further provision relating to stop-and-search powers, which are important and which we do not regret—far from it. I rather suspect that if Her Majesty's Government reviewed the operation of the provisions in the light of incorporating the British Transport Police into Police Scotland, they might well find that it makes things simpler, because it would not need to be included in the order.

That is why I have misgivings about supporting the amendment, but it is important to reflect on some of the points made by the noble Lord, Lord Foulkes. It is important to say at the outset that the integration of the Scottish part of the British Transport Police into Police Scotland was not a recommendation of the commission under the chairmanship of the noble Lord, Lord Smith of Kelvin. It recommended devolution of legislative competence in relation to the policing of railways and railway premises and that the British

[Lord Wallace of Tankerness]

Transport Police should become a cross-border authority. It is the SNP's interpretation that it has to be integrated into Police Scotland. Integration was only one of three options that the British Transport Police working group identified. Significantly, it was the option with the highest degree of risk and was opposed by most stakeholders.

The noble Lord mentioned the recent report of Her Majesty's Chief Inspector of Constabulary in Scotland. He found in paragraph 47:

"As the decision to transfer BTP's functions in Scotland to Police Scotland was a Ministerial decision, no single, detailed and authoritative business case which articulates the benefits, disadvantages or costs of the transfer to Police Scotland was developed".

In many respects, the Scottish Parliament has been asked to do this blind but, as we have heard, there is a majority. There was a failure to consult in any meaningful way, a failure to work out how we maintain the detailed expertise of the British Transport Police on the railways postmerger, how costs would be assigned and how potential disputes would be resolved. That is being done at a time when it is fair to say that considerable challenges face Police Scotland as a result of what I and my party believe was a botched centralisation. Indeed, my Liberal Democrat colleagues in the Scottish Parliament were lonely voices when they made the case against the centralisation of Police Scotland. We have seen a succession of resignations, suspensions of senior officers and early retirements, both in Police Scotland and the Scottish Police Authority. We welcome Susan Deacon's appointment and hope she can get a grip on things, as she has recently taken the reins. There has been a failed IT project and a report from the Auditor-General in Scotland referring to a number of instances of poor governance and poor use of public money. If that had happened in the second biggest police force in England, let alone the second biggest in the United Kingdom, we would probably have had a "Panorama" special by now. I am not sure why the media have not latched on to what has been going on.

I do not think the time is right at all for this merger. There are other issues which the Chief Inspector of Constabulary has identified in his findings. Among them are the facts that full costs have not been assessed, and the financial impact on railway policy in England and Wales of transfer of railway policing in Scotland has not yet been fully assessed. In that respect, will the Minister tell us, if it transpires that there are costs to transport policing in England and Wales, under the various memorandums of understanding with regard to allocation of costs, where will that cost fall? Will it fall to the Scottish Government to bear? That will undoubtedly be important as things go forward.

The noble Lord, Lord Foulkes, raised the potential issue of transfer of property. Are there any consequential orders or steps that have to be taken under the Railway Policing (Scotland) Act 2017 that would involve the United Kingdom Government in giving full effect to that? What would be the UK Government's policy in relation to it? As the noble Lord said, there is some leverage here, and I hope it is used sensitively.

It is also fair, however, to acknowledge that this Parliament, including this House, agreed to the devolution of railway policing in Scotland. I was going to say that the ship has sailed but it is probably better to say that the train has left the station. It is a matter for the Scottish Parliament. My Liberal Democrat colleagues in the Scottish Parliament, supported by Labour and Conservative MSPs, sought to delay the merger until 2027 at the very earliest, failing which to oppose it outright—but it was a decision of the Scottish Parliament to reject that delay and, indeed, to support what happened. It would be remiss of this House to gainsay what has been done by the elected Scottish Parliament, but there are issues still to be determined and some indication of the Government's stance on those would be very welcome.

Lord Forsyth of Drumlean (Con): My Lords, the noble and learned Lord may be correct about the train having left the station, but I remind him that during the passage of the Scotland Act as it now is many of us warned about this problem—and he himself made a speech exactly saying that. But such was the political imperative from some people not to be seen doing anything that would cause an upset with the Scottish nationalists that we allowed this to go ahead. The result is that we are looking at the prospect of the destruction of an organisation that has served this United Kingdom well for more than two centuries. Is it two centuries, or over two centuries?

Lord Faulkner of Worcester (Lab): Since 1826.

Lord Forsyth of Drumlean: Since 1826. Okay, so it is almost two centuries—certainly since there were first proper means of crossing the border at speed.

I just find it extraordinary. What can possibly be driving this? What can be the motivation? At a time when we are threatened by lone-wolf terrorists, travelling around the country, when we have seen attacks in Glasgow, Manchester and Birmingham, what on earth could be driving this? Why would someone want to break up an organisation which has a proven track record of success, which has shown great expertise, and which is specialist in its nature? How will the practical problems be resolved? Does the policeman have to get off at the station as soon as the train reaches the border and someone else come on board? What is driving this? I have come to the conclusion that the answer lies in the name—the British Transport Police. This is the sort of ideological battle that we thought we had put behind us in Scotland being translated into something that threatens the security of people in Scotland and the rest of the United Kingdom.

Lord Maxton (Lab): There is no station at the border at all, whatever, in Scotland, between Scotland and England. The first station is Carlisle, which is in England.

7.45 pm

Lord Forsyth of Drumlean: There is also Berwick. Of course, the noble Lord is right about that, but the people who are responsible for this act of vandalism—because that is what it is—would want to have a station there because they want to have a border there. That is the point that I want to make.

The noble and learned Lord, Lord Wallace of Tankerness, made the kind of speech that we expected from him—a very careful, legalistic speech that points out, quite correctly, that what the noble Lord, Lord Foulkes, is proposing is not really relevant to what we are all talking about. I hope that he will not press the amendment to a vote, because I would find it very difficult to vote against this measure, for the reasons that the noble and learned Lord gave. I would find it difficult to vote in favour of his regret amendment, but I absolutely agree with him in his analysis of what needs to happen and on the levers that are available to Ministers to prevent it happening.

One point that the noble and learned Lord, Lord Wallace, made that I thought was very interesting is about who will bear the costs of this, if it happens. I remind the House of the famous no-detriment principle, under which the costs of having to put this right for the rest of the United Kingdom should be borne by the Scottish Parliament. So not only will the taxpayer lose out in Scotland but also the citizen from the point of view of security.

I make one final point. I do not want to repeat all the arguments put forward at the time of the Scotland Act, as it now is, in 2016. The conduct of the Scottish Government in respect of Scottish policing is extremely worrying for everyone in the United Kingdom. We have a situation whereby a police chief constable has been on leave for some time while accusations were investigated. The Scottish Police Authority on 8 November wrote to the chief constable asking him to come back to work on 10 November, and the Scottish Police Minister, Mr Matheson, overruled the independent authority and told it to withdraw the letter asking the chief constable to come back to work. The independence of the police from political action is a fundamental part of our constitution; so is the rest of the United Kingdom really happy for the British Transport Police to be put in the hands of a Government who show little respect for the independence of police authorities or the constitutional principles involved?

I was very much opposed to creating a single police authority in Scotland for the very reason that it creates a risk of political interference in the operations of the police. That single authority has been created; it has not produced any of the savings that were considered likely to arise, and it has created a huge problem of morale. There have been several examples whereby Police Scotland has fallen below the very high standards that we have been used to in a generation. I say to the Scottish Nationalist Government in Edinburgh, first put your house in order before you wish to destroy an organisation such as the British Transport Police. There is a duty on Ministers to do everything that they can to prevent this happening, albeit that the powers lie. I commend the noble Lord, Lord Foulkes, and agree with him in his objectives, but not—

Lord Clark of Windermere (Lab): In his contribution, the noble Lord mentioned terrorism, which is a critical issue. I speak from the other side of the border—Cumbria—where we of course have the experience of two other police constabularies: the Civil Nuclear Constabulary and the Ministry of Defence Police. These are absolutely critical in the way that we monitor possible terrorism. Have these two forces played any part in the debate in Scotland?

Lord Forsyth of Drumlean: I do not know the answer to that question but I am sure my noble friend the Minister will be happy to deal with that when he comes to reply. I know others want to contribute so I ought to sit down, but I hope that, in his response, the Minister can offer some comfort. This matter is about not just Scotland but the security of the whole of the United Kingdom and a Government putting politics before the safety of the people.

Baroness Ramsay of Cartvale (Lab): My Lords, I come in just after the noble Lord, Lord Forsyth, because I agree with a great deal of what he said. Unlike him, however, I was a great advocate for a national police force in Scotland. I have spent a lot of my professional life in the Nordic countries and they all, without exception, have a national police service. I saw no reason why Scotland could not exactly fit the same mould of an excellent national police force.

However, like a lot of other people, I have been underwhelmed by the way that the concept—I still believe in the principle—has been implemented in Scotland, but I do not believe that this is the right place or time to talk about the ills and misfortunes of Police Scotland. What I would say—and I will try to be very brief and not repeat what has been said already—is that it seems absolute folly to think of going for an amalgamation of a very professional, exceptionally efficient force like the British Transport Police, with its special expertise in anti-terrorism, which is of very great relevance right now. To try to amalgamate that with Police Scotland—even if Police Scotland was not in such a dire situation in many directions—would, at the best of times, lead to a situation of uncertainty and change. We really should not inflict this on the country. Apart from efficiencies and principles, there is also the question of the effect on the security of the country, and I really think it should be avoided at all costs.

Lord Empey (UUP): The noble Lord, Lord Foulkes, in his customary understated and quiet way, has introduced this proposal and, I have to say, it brings back memories of when we discussed the Scotland Bill. As the noble Lord, Lord Forsyth, has pointed out, every concern that Members expressed at that stage has been borne out. I believe there is an overwhelming national interest in this, not simply a Scottish interest. The British Transport Police is a national police force in Great Britain. Its expertise is unique in this country. The policing requirements, training and experience of a normal, geographical, territorial constabulary are entirely different from a transport-based police force, which does a very specialist job. Policing trains, rail lines, stations and all that goes with the transport network is an entirely different discipline, requiring different training, different equipment and a completely separate constabulary—which is exactly what we have. All the reports that have been written about it have indicated that it is performing well and according to target. I understand the point that the noble and learned Lord, Lord Wallace, makes about

[LORD EMPEY]
the legal position and I accept that there is devolution, but there is a national interest here which, in my opinion, should overrule a simple matter of devolved matters. I ask the Minister, in his summing up, to address this.

There is an example, which the noble Lord, Lord Foulkes, mentioned and which I think came up in the 2016 debate. We understand that the Scottish Parliament will want a say and an interest in what is happening in Scotland—a perfectly reasonable position—and there is a way of doing this, as the noble Lord, Lord Foulkes, pointed out, with the chief constable going not only to the Scottish Minister of Justice but perhaps the Scottish Parliament or the relevant Scottish police authority. There is a precedent for this. We had an argument in Northern Ireland over the jurisdiction of the National Crime Agency. A lot of people objected strongly to that, but the Government took the view that, because they had UK-wide responsibilities, because gangsters operated across and between islands, and because of the necessary expertise that was required, the National Crime Agency had to have a role in Northern Ireland. The argument was whether an officer of the National Crime Agency could have the powers of a constable. That was blocked for quite some time until a settlement was reached. The settlement was that the head of the National Crime Agency would go to the Policing Board and would contact the chief constable of the Police Service of Northern Ireland. They would do that as and when required, but at least annually, so that there was a clear link between what was happening in the two forces.

We raised the question in the debate in 2016 about the contracts, and we have already heard some disturbing statistics mentioned by other Members about the numbers of police officers who may not wish to transfer. The fact is, the expertise and experience is going to be lost. We had that problem when the Police Service of Northern Ireland came in and we lost enormous numbers of detectives, for example. It has taken years to get that experience back. What happens if it is the same for the British Transport Police? We have to remember—the noble Lord, Lord Forsyth, made the point—that, in mainland Europe, there have been a number of attacks on trains, where a terrorist gets on in one country, travels to another and the explosions and deaths occurred on the way. This is one way in which they move around their equipment and terrorist activities. I am not an expert on Police Scotland, but any territorial constabulary does not have this expertise, experience or capability. Who is going to train them? The only people who have that experience currently are the British Transport Police.

I am very much of the view that this is an ideologically driven proposal by the Scottish Government because it is the "British" Transport Police. I sincerely hope that this is not the reason but, were it to be the reason, is it any justification for putting the safety of the people of the United Kingdom at risk simply to abide by an ideological demand? The United Kingdom Government have a responsibility for national security which overrides any devolved institution. I sincerely hope that, in his reply, the Minister will agree at least to look at this and to engage with the Scottish Government to see if he can persuade them to see common sense. The UK Government and the Secretary of State for Scotland have a responsibility to ensure the security of Scotland as part of the United Kingdom—we should exercise that.

These proposals are devoid of merit in my view. There is a way out—which has been set out very clearly—that will ensure that devolution is respected; that the Scottish Government are given their place; that the Minister of Justice will have regular reports, both written and verbal, when he or she would require them; and that the policing board in Scotland and/or a committee of the Scottish Parliament should be able to call upon the chief constable of the British Transport Police if they felt it necessary. All those things could be done. We can have a win-win situation for everybody, where national security is guaranteed and the Scottish Government are given their place. That would be the way ahead and I sincerely hope that the Minister will take it upon himself to go back and ask the Scottish Government to revisit this issue.

8 pm

Baroness Liddell of Coatdyke (Lab): My Lords, I will not delay the House long. I have not yet had the opportunity to speak to the Minister across the Dispatch Box and therefore welcome him to his post. However, I would be grateful if he could answer some troubling questions.

My noble friend Lord Foulkes said that there are two counterterrorism forces in the United Kingdom: one is the Metropolitan Police, the other is the British Transport Police. What discussions have taken place between the United Kingdom Government and the Scottish Government on ensuring that intelligence transfer, which is absolutely critical in the fight against terrorism, is in no way compromised by this decision? I take on board the point made by the noble Lord, Lord Empey, about the expertise and experience of a force that has to deal with problems such as terrorism. There is an accumulated knowledge that cannot necessarily be written down. It comprises a knowledge, an instinct and a recognition of where problems lie.

Over the weekend, we saw the figures mentioned by my noble friend Lord Foulkes—namely, that about two-thirds of the British Transport Police do not wish to go down this transfer route. How will the capability of the new force match the knowledge and experience of the existing British Transport Police? These issues should be above and beyond party political concerns. We all know what the terrible attack on Glasgow Airport felt like. We know the difficulties of communicating intelligence to people who may not have a background in the intelligence community. I look to the Minister for reassurance that this is being discussed with the Scottish Government, the Metropolitan Police and the police forces in England, and with the intelligence and security services for the whole United Kingdom.

The noble Lord, Lord Empey, mentioned the extent to which we have seen all aspects of transport, including trains, being used as a means of promoting terrorism. We need reassurance on this. Like many of my noble friends and noble Lords, I am concerned about the jingoism around this issue: it has to have Scotland and

a tartan stamp on it. We are dealing here with people's lives and livelihoods. The lives are more important than anything. We need answers. I say from this side of the House that we need reassurance from the Government that they, too, share this concern and are raising it in a pointed and deliberate manner to get the kind of answers that will keep people safe not just north of the border but south of it as well.

Baroness Harris of Richmond (LD): My Lords, I too will be extremely brief. For many years, I have helped, supported and encouraged the British Transport Police and I remember very well the Act that went through and the concerns that we had then about what would happen if the BTP were joined with Police Scotland. I agree with my noble friend that this is not about the BTP joining Police Scotland, although I am sad about that because that is really what we are all talking about.

I admit that the example I am about to give may not be a very good one, but I want to draw your Lordships' attention to what happened when the royal parks police force was promised that the parks would continue to be policed adequately when it was merged with the Metropolitan Police. That did not happen—did it?—because the Metropolitan Police force is far too busy to be involved with looking after parks. As I said, this is not an ideal example but it indicates what could well happen if the measure we are discussing goes ahead—and so it will when the BTP joins Police Scotland, which I am afraid is not a very shining example of a police force. What happens when a train reaches the border? I absolutely agree with the noble Lord, Lord Forsyth, who asked exactly the same question about what happens either side of the border. Will the BTP have to disembark and hand over to the relevant other branch of the BTP? What will it call itself, because it will not be British anymore? I predict—

Baroness Adams of Craigielea (Lab): We should remember that Scotland does not have a border only with England, but also with Northern Ireland. All that separates us is the Irish Sea. What will happen to the ferries? Will the British Transport Police and the Scottish police change mid-Irish Sea? Will we set up a hard border between Scotland and Northern Ireland? Are we taking Scotland out of that equation? This is more about nationalism than devolution.

Baroness Harris of Richmond: The noble Baroness makes a good point and I concur with what she says. I predict that this will go horribly wrong at some point and that is a real shame. I hope that the noble Lord has listened very carefully to the views that have been clearly expressed around the House, and certainly the resolution that the noble Lord, Lord Foulkes, talked about, as that will be extremely important.

Lord Hope of Craighead (CB): My Lords, as a fairly frequent traveller on the east coast railway line from Edinburgh to London King's Cross, I would like to say a word or two about this issue. As the noble Lord, Lord Maxton, pointed out, there is no train station at the border, which you reach a little north of Berwick-upon-Tweed on your way to Dunbar. As I understand the situation, that means that in order to police effectively south of the border, British Transport Police officers will have to get on to the train at Waverley in Edinburgh, so they will travel the whole way down the line, as they do at present. Going north, they cannot get off at Berwick-upon-Tweed, because they still have several miles to run in England before they reach the Scottish border, and they will have to travel all the way to Waverley.

Therefore, the ridiculous situation created by this proposal by the Scottish National Party is that the British Transport Police force will remain on the train, as it does at present. It will cease to provide the kind of security north of the border that the noble Baroness, Lady Liddell, talked about, although to do its job effectively in England, it will have to travel the whole journey. Therefore, members of the Scottish police force will be travelling on the train, getting off at Berwick if they are lucky—but not every train stops there—or going all the way down to Newcastle and then having to travel all the way back again. I cannot speak for the west coast line because I am not so familiar with it, but presumably the same problem applies there, and you have to travel at least to Carlisle before you can get off the train.

Lord Maxton: It is even worse on the west coast, because Carlisle is even further south than Berwick-upon-Tweed.

Lord Hope of Craighead: My Lords, a curious feature of this measure is that if British Transport Police officers are brave enough to exercise their powers as British Transport Police officers north of the border, they are given the power to do that by paragraph 2 of Schedule 2. In fact, the paragraph is consistent with the idea that we do not go ahead with the merger at all. It is a perfectly sensible method of solving the problem which the Smith commission had to face up to, which was to say that the functions of the British Transport Police in Scotland will be a devolved matter. That is a perfectly sensible proposition. What has gone wrong is the Scottish National Party's interpretation of it, as the noble Lord, Lord Forsyth, said.

For all the reasons that others have given, I am strongly against the merger. However, like the noble and learned Lord, Lord Wallace of Tankerness, I cannot see anything wrong with the order we are asked to consider. Therefore, if the Motion were pressed, I regret that I would have to vote with the Government because that is the state of play. However, I entirely sympathise with the plea of the noble Lord, Lord Foulkes, to the Minister. Given the practical example I have given to the Minister, I hope that he can point out to the Scottish National Party that it is a waste of public money to have two police officers travelling on the train from Newcastle all the way to Edinburgh and back again just to solve the problem of the merger which it is trying to advance.

Lord Faulkner of Worcester: My Lords, in opening the debate, the Minister referred to the degree of opposition to this proposal in this House. He was not wrong in that. He could also have mentioned the degree of opposition in the Scottish Parliament, most particularly among his colleagues in the Conservative

[Lord Faulkner of Worcester]

Party, who are on record as opposing this proposal most vigorously, particularly Ruth Davidson. He could have included the Liberal Democrats and the Labour opposition in the Scottish Parliament as well. But above all, he should have mentioned the opposition of the British Transport Police and the British Transport Police Authority. When it gave evidence to the Scottish Parliament in March, it said that dealing with fatalities, for example, could take 50% longer under the new plans, and that,

"there is well-defined evidence that a non-specialist force is less able to provide the consistent levels of service that a dedicated policing commitment can offer".

Decades of experience of dealing with IRA threats would be lost, and the work that the BTP undertakes as the lead authority on scrap metal theft across the whole of Great Britain would also be lost if this proposal went through.

Fortunately, there is an opportunity for the Scottish Parliament to think again about the model of devolution which it is putting forward. Indeed, it would have been helpful if this House had passed the amendment which a number of us tabled almost exactly two years ago, which made it clear that, while we were not opposed to devolution of transport policing in Scotland, that devolution should be on the basis that a force linked to the British Transport Police should be the agency that carries it out. I spoke to the chief constable of the British Transport Police, and he is entirely happy with that. Indeed, in its evidence to the Scottish Parliament the BTP said that it is happy to have a direct relationship with Scottish Ministers and with Holyrood. If it is necessary to change the name of the force in Scotland, for the reasons that the noble Lord, Lord Forsyth, referred to, that is possible—there is no reason why it should not be called "Transport Police Scotland" or "Scotland Transport Police". Nobody is hung up on the name of the British Transport Police. What matters is that the job is done properly and in the most effective way.

Lord Forsyth of Drumlean: The noble Lord says that nobody is hung up on the name of the British Transport Police, but the Scottish National Party is.

Lord Faulkner of Worcester: The noble Lord is of course absolutely right.

I will finish by picking up one of the points that the noble Lord made and adding to it. He referred to the no-detriment principle in the Smith commission report. Principle 5 of that report says that the package of powers agreed through the Smith commission process should,

"not cause detriment to the UK as a whole nor to any of its constituent parts".

It is evident that there is a financial implication. There is also an implication for travellers travelling between England and Scotland, who will suffer a detriment, as a number of speakers in this debate have indicated. Therefore, when the Minister goes back to talk to the Scottish Government, he must take seriously the need for that no-detriment principle to be applied and impress on them that it certainly applies in this case.

Lord Harris of Haringey (Lab): My Lords, I hope that the Minister will be able to answer on behalf of the United Kingdom Government and not simply on behalf of the Scotland Office, because this raises a whole number of implications. The idea of integrating the Scottish component of the British Transport Police into Police Scotland raises a number of issues.

I admit that when I first heard about this proposal, the cynical part of me—which colleagues will know is not often to the fore—assumed that this was about the following. As I understand it, when, in its wisdom, the Scottish Parliament created Police Scotland, it agreed a floor on the number of police officers. Indeed, the different parties were bidding against each other as to quite where that floor should be. I would like to know whether the officers transferred will be part of that floor or not. The motivation behind all this may well be that, rather than change the floor, which would obviously raise all sorts of difficult political issues, this is a way to ensure that the floor is achieved simply by transferring in from outside a number of officers from the British Transport Police. Perhaps the Minister can tell us how many officers are concerned and where they sit with regard to the statutory floor in terms of the British Transport Police.

The second question is about the viability of what is left of the British Transport Police; again, the British Government must, presumably, take this extremely seriously. What is the percentage or number of officers who are being taken out of the British Transport Police, and where does that leave the rest of the British Transport Police and its infrastructure and arrangements? Clearly, if that is the case, that raises big issues.

While the Minister is about it, perhaps he can tell us also what has become of the Government's infrastructure policing review. Again, this is critical to the future of the British Transport Police. At one stage, the present Prime Minister, when she was Home Secretary, put forward a number of proposals which would have involved the Ministry of Defence Police, as has already been mentioned, and the Civil Nuclear Police Authority, bringing them together, possibly with elements of the British Transport Police. Was this part of some master plan to dismember the British Transport Police? If that still exists and the review is continuing, it makes it even more imperative that we look at the future of the British Transport Police. I assume that the Government, collectively, are doing that.

8.15 pm

On the question of the funding arrangements, the British Transport Police is largely funded by the transport operating companies. Therefore, if this leads to additional costs, is this a burden on the train operating companies, and how will that be split between them? What are those arrangements? I do not know how the no-detriment policy applies to train operating companies that make contributions in this area.

One final question for the Minister is about the terms and conditions and training requirements of the British Transport Police compared with Police Scotland. Do firearms officers in Police Scotland have the same type of training and the same levels and standards of training as firearms officers in the British Transport Police? If that is not the case, presumably there will be

a harmonisation process, which, in turn, will bring extra costs. Reference has already been made to pension issues. Again, what are the terms and conditions and the extra costs associated with harmonising terms and conditions between the two forces?

These things all matter. The British Government as a whole—not just that concerned with Scotland—have to take these important matters seriously. If the result of this wish by the Scottish Government to fully integrate the officers currently involved in policing Scotland's transport system goes ahead and it will have major consequences for the British Transport Police and its effective policing mission, or if other elements of government policy impact on it, we need to know. We certainly need to know before proceeding in the way the Government wish us to proceed tonight.

Lord Stephen (LD): My Lords, as a former Transport Minister in Scotland who worked closely with the Labour Party to ensure that there was greater devolution of transport powers, particularly with regard to the railways in Scotland, of course I strongly support the principles of devolution that the Smith commission supported and which this Parliament legislated on. I also fully understand the position as explained by my noble and learned friend Lord Wallace of Tankerness, and as will no doubt be explained by the Minister again in his summing up. However, albeit that we understand the legislative position and there seems unlikely to be a vote this evening, we are very deeply concerned about what is proposed.

First, on the situation with Police Scotland, I was always opposed to the creation of a single police force in Scotland, and it has turned out to be a shambles and a failure. The noble Lord, Lord Forsyth, spoke about that eloquently. We have a situation where this decision by the Scottish Government and the Scottish Parliament to try to get rid of the British Transport Police in Scotland has clearly been taken for dogmatic, doctrinaire, nationalistic reasons. We have heard from speaker after speaker that there are deep concerns about operational policing, the possible impact on the train operating companies, potentially higher fares, and the minimum police numbers—the floor that the noble Lord, Lord Harris, correctly identified. There is much concern about this wrong policy. Surely, whatever the legislative or legal position, in these circumstances we can call out the SNP Government and urge the Minister strongly this evening to do something about this situation. If strong action is not taken now, the UK dimension of the institution that is the British Transport Police and the co-operation and policies that we have learned about this evening to support anti-terrorist measures will be scrapped by a Scottish Government who put removing the word "British" first, and the quality of the service and of the work being done by that institution will be undermined and pushed to the back.

I am sure that we could point to other areas where we see this sort of erosion and wrong policy. There is a long list of UK institutions of real excellence in this country—I think of the education system, the research councils and the health service—where this sort of approach would be the wrong one to take, but we could be seeing the thin end of the wedge here. There are real concerns about pushing the boundaries in other policy areas. This is not about devolution; it is about dogma and nationalism. Therefore, this evening we should be really concerned about what is happening here, and we must urge the Minister, in his summing up, to give the sort of reassurance that the noble Lord, Lord Foulkes, is looking for. This issue is really important and we need to do something about it.

Baroness Adams of Craigielea: My Lords, I shall not go over all the things that we have already gone through. I have grave concerns about this issue—I had concerns about a single police force in Scotland—but I do not think that this is how the Government in Scotland look at it. We have seen this approach from this Government from the beginning. They suck powers up from local government and they suck powers down from the UK. This is all about getting independence by the back door. The noble Lord is absolutely right when he says that it is the thin edge of the wedge. Every time we pass legislation in this House with consequences for Edinburgh, they will jump on it and suck it up. It really is incumbent on the Minister to see that they do not cut the borders between England and Scotland and between Scotland and Northern Ireland, creating a Scotland-only enclave and taking all the powers to themselves.

Lord Berkeley (Lab): My Lords, I shall be brief. In preparation for the debate two years ago, I checked with officials and Ministers in the Department for Transport here, first, whether they approved of this proposal and, secondly, whether they had been consulted. The answer was no in both cases. They did not know that it was happening. They shrugged their shoulders and said, "Well, the Government have decided to do it", and the Labour Party at that time went along with it. That is why we had a debate two years ago and it is why we divided the House at half past eleven at night. We nearly won but not quite. However, we were right, and nearly everybody who has spoken tonight has confirmed that.

I want to make two points. As one noble Lord said, the BTP is funded in England and Wales by the operators and Network Rail. As we all know, Network Rail is now owned by the Government. So who is funding the BTP in Scotland, and what about Virgin Trains, which goes up the east and west coasts? Does it fund the police until it gets to Gretna or Berwick, and who is funding it beyond there? This affects the franchises. There is a problem with the franchise on the east coast main line at the moment.

Finally, I turn to Article 6 of the draft order. As the noble and learned Lord, Lord Hope, said, it allows the British Transport Police to cross territories. The British Transport Police from England may be able to go north into Scotland, but the order does not say anything about the Scottish police being able to chase people south of the border. Does that mean that they will have to get off at a station at around that point? I do not think that there is a station at Gretna any longer, but does it mean that they will have to get off at a station somewhere around there? If the British Transport Police is mentioned in this order as being allowed to go north to arrest people or whatever, I need an

[LORD BERKELEY]
answer from the Minister on what will happen with regard to police going in the other direction. How will the Scottish transport police, or whatever they are to be called, be able to operate south of the border without them being mentioned in a new Article 6(d) in the order as being allowed to work extraterritorially? This situation seems extraordinary, and I look forward to the Minister's answer.

Lord Clark of Windermere: My Lords, this debate has inevitably centred on Scotland and the British Transport Police, but civilian police forces such as the British Transport Police—I emphasise "civilian" police forces—were created for a particular reason. There are at least two other such police forces. The Ministry of Defence Police—not the "Redcaps"—and the Civil Nuclear Constabulary were similarly created for a particular reason.

Having lived for most of my life in the borderlands in the north of England on the opposite side to Scotland, I am very aware of those three civilian police forces, and I am interested in the Government's reaction. If they concede on the British Transport Police but do not follow the sensible suggestions of my noble friend Lord Foulkes, what will happen to the Civil Nuclear Constabulary? I declare an interest as a former director of Sellafield. I shall be a bit circumspect in what I say about the Civil Nuclear Constabulary, but we should bear in mind even now the transport of material from Dounreay and other sites in Scotland to Sellafield. All those trains are accompanied by armed members of the Civil Nuclear Constabulary, just as every defence establishment in Scotland is policed by the Ministry of Defence Police, a GB body. So, when we talk about this order, I am interested in what happens to the other comparable civilian police forces.

Lord McAvoy (Lab): My Lords, if I say anything, I will only be repeating some of the things that have already been said a lot more eloquently. It only remains for me to say that we fully support and congratulate my noble friend Lord Foulkes of Cumnock on his determination and persistence in this matter. He has made a reasonable request. I know from previous experience that the Minister is a serious and flexible man, and I am quite sure that he will respond in a positive manner.

Lord Duncan of Springbank: My Lords, I congratulate the noble Lord, Lord McAvoy, on his brevity. I was hoping for a longer intervention so that I could just gather together some more of my papers before I began—they are piling up around me.

I begin by thanking the noble Lord, Lord Foulkes of Cumnock, for initiating this debate. The sheer number of contributions, and their quality and breadth, is testament to the need for this discussion. It is important for me to stress, however, that this debate was born of a particular order but, having heard several noble Lords, much of the discussion has not focused on the order itself. If your Lordships will forgive me, I will touch on the order at the outset because it is important to stress why it is before us tonight. I will then spend most of my time talking about the issues that have been raised.

I turn, first, to the purpose of the order. It has been laid simply to ensure that the measures contained in the 2016 Act that affect the law elsewhere in the UK, which apply to reserved matters in Scotland, can be amended as required. The Scottish Parliament cannot do that and we have to do it. That is the purpose of the order. It makes provisions about arrests effected both in Scotland and outside Scotland in connection with crimes committed in Scotland that are being investigated under Scots law or where extradition to Scotland has been necessary. In response to the noble and learned Lord, Lord Hope, this is the aspect that allows the British Transport Police to reach beyond and equalises the ability of the police to act in each other's jurisdictions. That is already contained in the order.

These provisions are important because they are part of the ongoing devolution settlement. The process for developing such an order is in itself important, both by the manner in which the two Governments co-operate and collaborate and by the means by which they are adopted and introduced in your Lordships' House and the other place. It is simply a way of ensuring that devolution works effectively.

In response to the noble and learned Lord, Lord Wallace of Tankerness, I should also stress that further orders affecting the British Transport Police will be coming. He will be aware of Sections 90 and 104 of the Scotland Act 1998, which touch on the transfer of people, assets and liabilities from the British Transport Police and the ability to make any consequential provision. Further orders will be made specific to this—

8.30 pm

Lord Maxton: Will there also be orders relating to the different legal systems in Scotland and England? That is relevant to any discussion on British Transport Police.

Lord Duncan of Springbank: I thank the noble Lord for his intervention. The orders, when they arrive, will be constructed through the collaborative process between the two Governments, which I touched on a moment ago. In any order, they will bring forward proposals that comply with both Scots law and the broader law of England and Wales. We should be able to have that before us.

It is important to stress, as several noble Lords have, that the Smith commission and the legislation by which its conclusions were enacted are important elements of the continuing Scottish devolution process.

Lord Forsyth of Drumlean: I apologise to my noble friend but am I being stupid? When he said that there will be further orders in connection with the British Transport Police, is he saying that the Government intend to support the break-up of the British Transport Police?

Lord Duncan of Springbank: To be clear, in this instance, the Smith commission and the rules that it contained devolved to the Scottish Parliament the right to take this matter forward. The Scottish Parliament has determined how it shall do so. Today's discussion is about how it has interpreted the clauses. At present,

it is anticipated that we must make sure that the ongoing British Transport Police continues to function. I will come to the points raised in a manner that will, I hope, satisfy noble Lords—

Lord Foulkes of Cumnock: I want to pick up on what the noble Lord, Lord Forsyth, said, because he has cottoned on to something important. The Minister said, I think, that one of the orders would relate to the transfer of property, which I mentioned. I hope that order will not be laid until such time as any action that he proposes to take as a result of this debate is concluded.

Lord Duncan of Springbank: Again, the noble Lord, Lord Foulkes, has anticipated what I will say shortly. Perhaps noble Lords will allow me to make some progress on the broader position.

I emphasise again that whatever reservations noble Lords may have about this approach, we must recognise and respect the agenda of the Scottish Parliament. That is part of the ongoing Smith agreement. However, let me turn to the matter that has most exercised the noble Lords here today—

Lord Berkeley: My Lords—

Lord Duncan of Springbank: Perhaps the noble Lord will allow me to make some progress. I may have time to give way to him later.

Lord Berkeley: I want to ask the Minister about what he has just said before he moves on to the next point. He mentioned that under Article 6(b) the British Transport Police will be able to go north of the border. But will he respond to my question? Will Scottish police be allowed to go south of the border or will they be seen as foreigners and so not allowed in?

Lord Duncan of Springbank: The noble Lord has again pre-empted what I am about to say. To be very clear, the purpose of the order is to ensure that criminals can be pursued in either direction. It seeks to equalise the ability of the transport police to function in both jurisdictions, and it delivers that.

I come back to the remarks made by the noble and learned Lord, Lord Wallace of Tankerness. The functions of the British Transport Police in Scotland will be a devolved matter. However, in the previous debate, the noble and learned Lord went on to say that that is slightly different from saying that British Transport Police itself will be devolved. It is, therefore, a matter of some interpretation. We have heard a number of points thus far from noble Lords on why that interpretation does not meet the test of good policing within the wider infrastructure of the United Kingdom.

Recent press reports of morale in the Scottish division of the British Transport Police show that up to two-thirds of officers are unsure whether they will transfer to Police Scotland following the merger, and only one-third of officers have declared that they definitely intend to do so. That should give pause for thought and concern. It is also worth stressing that, importantly, British Transport Police has, throughout its history, been a success. Since 2005, it has reduced crime on Scotland's rail network by 56%, an achievement that compares favourably with an overall reduction of crime in Scotland of 38%. That is no mean feat and certainly worthy of praise. We should recognise that here.

The ultimate test of the merger under discussion is whether it makes the policing of Scotland's railways better. As a former Member of the European Parliament, I recall how important it was that, before substantive changes were made to legislation, serious impact assessments were undertaken to ensure that the outcome would be delivered by the means chosen. That important element is missing from some of the discussions being put forward. I say that as a member of the travelling public and in recognition of the concerns that have been expressed by a number of the agencies and bodies cited this evening.

Before I conclude, I will touch on some of the substantive points made. I begin with the confusion that may have arisen around what will happen next. We need to put at the fore of our minds that this involves police officers who have delivered for the betterment of our country. The merger is not due to any failing of theirs and at no point should it be recognised as such. Nor is it a failing of British Transport Police in any element of its operation.

Some of the issues raised tonight need to be dealt with in great detail, but I will touch on what the noble Lord, Lord Clark of Windermere, said. He talked about the inclusion of the Civil Nuclear Constabulary and the Ministry of Defence Police. It is important to stress that the Smith commission did not at any point intend to devolve these aspects. Therefore, although they are touched on in the order, at no point will these functions be onward devolved to the Police Scotland operation. That is particularly important.

To make this move work, a joint programme board has been created. That board is particularly focused upon where the points of friction rest and how they can be addressed going forward. I will come back to its role in delivering the outcomes that noble Lords here today would like to see.

The noble Baroness, Lady Liddell, touched upon one of the most fundamental questions—terrorism—and how we can assure there is no diminution in our preparedness, our scope, our ability to operate and our attention to the issues before us. There are pre-existing protocols between Police Scotland and the various agencies and constabularies south of the border. These will continue to deliver against that outcome. It is important, however, that they are tested to make sure that they are fit for purpose in that regard.

This is not only about Scotland—it is important to stress that. The British Transport Police covers the whole of our country, not only one part of it. Further, we have to recognise that the threats to our country are not specific to one nation or region but, rather, in many instances are a threat to us all. We must recognise, therefore, that there will be responsible agencies which will take these matters forward.

Let me touch on where we can make serious progress. To address the challenges of the onward devolution of the policing of the railways in Scotland, the two

[Lord Duncan of Springbank]
Governments have established a joint programme board. The board is currently working to achieve an orderly transfer and to provide affected officers and staff with clarity at the earliest opportunity. The board has sought to address the findings of the recent report on devolution conducted by Her Majesty's Inspectorate of Constabulary in Scotland, which has been cited by a number of noble Lords today. Its principal purpose is to ensure that each of those issues is addressed head on.

Therefore, minded as I am of the remarks of the noble Lord, Lord Foulkes, and other noble Lords, following this debate I will secure a meeting with the UK Government co-chair of the joint programme board. At that meeting I will take the salient points from this debate and put them before it. I will ask the board to produce a report, which I anticipate will form the basis of a formal discussion between the Government of the United Kingdom and the Government of Scotland. Thereafter I will write to the noble Lord with the result of that discussion and place a copy of that in the House. The next meeting takes place on 30 January 2018.

I stress again that there are two further Scotland Act orders pertaining to the British Transport Police. I will report back before these orders are laid.

Lord Forsyth of Drumlean: When the British Government's representative—the Minister responsible for this—attends that board, what will his policy be? Will it be to maintain the British Transport Police or to allow it to be broken up?

Lord Duncan of Springbank: The noble Lord, once again, puts his finger on the issue. Our purpose will be to ensure that the answers which come from the board are satisfactory. If they are not satisfactory, then opportunities will be provided for this House and others to move forward in a different way. Oh, I heard someone say, "What does that mean?", which is a helpful remark. I was trying to be cryptic in one sense. I am basically saying that this is not the end of the story. I hope that we will receive satisfactory answers at the programme board which will allow us the clarity to establish that we are satisfied that policing on our railways is not affected to the point of detriment.

Lord Foulkes of Cumnock: I think I understand what the Minister is saying and I agree with him. The Minister or the representative to the programme board is going to go to the board, express the points of view that have been made here—which have come from the unionists, the Conservatives, the Cross Benches, the Liberal Democrats and Labour—and report back to us. If we are not happy about the outcome, then there are two more orders which may or may not be laid and which we may or may not pray or move against. That will give us the opportunity after the programme board to know whether we are happy and whether or not the House and the Minister want to go ahead with those two further orders.

Lord Duncan of Springbank: The noble Lord may well say that but I stress again that the important thing is that the salient points raised by noble Lords today are considered in all seriousness by the programme board. I hope there will be an opportunity for that board to respond and to satisfy all the questions raised today. I have noted them down. To put them in context, we need to know that terrorism and security issues are addressed head on—there can be no diminution in these. We must recognise that this involves real police officers and that there can be no impact upon their well-being, their morale or their situation, and that they must be treated with respect throughout this process. We must be cognisant of the no-detriment principle. Where there are costs, we must understand how those costs will be allocated fairly and appropriately. We must also recognise that they should not be unfairly or inappropriately placed elsewhere.

Lord Wallace of Tankerness: On the question of costs and the no-detriment principle, is this a matter for the joint programme board to sort out or do the United Kingdom Government have a view as to how any detriment to the British Transport Police in England and Wales should be addressed?

8.45 pm

Lord Duncan of Springbank: We want to make sure that a no-detriment principle is adopted throughout, so there should be no impact on parts of the United Kingdom as a consequence of this which would have to be met by those who are affected by it.

It is important to note the other issues that we need to be very clear about. The British Transport Police is a specialist constabulary, not a traditional one. It focuses on particular aspects of enforcement which are important and cannot simply be substituted by officers from other traditional constabularies. We must not lose sight of that. Any risk that there may be flight from the particular integrated elements would in itself be a problem for the overall functioning of transport policing in Scotland. There can be no diminution in the quality of the service. We also have to recognise that throughout this area there is an issue of being respectful to the Scottish Parliament. The Scottish Parliament itself, through the Smith commission and onwards, is the principal interlocutor in addressing this matter. We cannot lose sight of that fact because it is also important.

Perhaps I may be a little more bold and say that in some respects this is one of those issues where one can see the difference between a unicameral and a bicameral Parliament. Perhaps if the Scottish Parliament had a second Chamber, some of these matters might have been addressed in a slightly different way. However, that might be a little bit provocative.

Let me conclude with a quotation which I am sure will be familiar to noble Lords, but perhaps they do not necessarily know its source. When I say the name Thomas Bertram Lance, I suspect that there will be blank stares. He was the director of the Office of Management and Budget in Jimmy Carter's presidential Administration. In 1977 he coined the maxim,

"If it ain't broke, don't fix it".

In some respects, we should always recognise the importance of that particular dictum. However, I should stress that that conclusion must be determined by the

Scottish Parliament as a matter of course. It is that Parliament's responsibility to hold to account the Scottish Government, who have moved this matter forward.

I appreciate that I have not had time to touch on all the issues raised in the debate but I hope that I have been able to give the noble Lord, Lord Foulkes, some comfort in my remarks so that he will not be regretful and therefore not press his amendment to the Motion. I hope that this has been a satisfactory response to our debate.

Lord Empey: Perhaps I may raise one point with the noble Lord. Where is the national interest in all of this? The Scottish Parliament cannot reflect it. A programme board is made up of two halves, one half of which is the Scottish Parliament and the other the UK Government. That board cannot have a national responsibility because it is made up of one part which does not have such a responsibility. My concern in all this is that the national security interest is going to fall between two stools. I would like an assurance from the Minister that that is not the case.

Lord Duncan of Springbank: I believe that I can give that assurance. The very fact that the comments made in this debate shall be summarised and transmitted very clearly to the programme board means that the views of noble Lords will not be lost. I also believe that those views represent the entire breadth of concern expressed, certainly in this instance throughout Scotland but also beyond. That must be reflected on by all those who take as their responsibility the forward movement of the British Transport Police and its future policing policy.

Lord McAvoy: Could I ask the Minister to convey the answers that he has not been able to give in this debate to the various noble Lords who asked those questions, and to distribute those responses?

Lord Duncan of Springbank: Yes, I am very happy to do that. We have a note of the questions and I have several responses in handwriting that I cannot quite read. That is one of the reasons I have not been as fluent as I might have been on some of the points. Where noble Lords have not received an adequate response, I will do my utmost to ensure that the answers are conveyed to them.

Lord Foulkes of Cumnock: My Lords, first I thank the Minister for his courtesy and sympathy in the run-up to this debate. He has been really helpful. I should also thank my noble friend Lord McAvoy for turning the screw on him on our behalf. My understanding is that he is mindful of the very great strength of feeling on all sides of the House and in every party and that that will be conveyed to the programme board. He is going to report back to us and that report will come before any further orders might be put forward in relation to the British Transport Police. I can assure him that we will remain vigilant and look carefully at what progress, if any, is made by the programme board, although we hope that it will be. We will keep an eye on it and we may return to these issues at a later stage. Meanwhile, in the light of what he has said in his response, I do not wish to press my amendment to the Motion to a vote.

Amendment withdrawn.

Motion agreed.

Data Protection Bill [HL]

Report (3rd Day) (Continued)

8.49 pm

Clause 162: Re-identification of de-identified personal data

Amendment 151A

Moved by ***Lord Ashton of Hyde***

151A: Clause 162, page 91, line 5, at end insert "and section (Re-identification: effectiveness testing conditions)"

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I turn to the new offence of reidentifying de-identified personal data. As a new clause, with no corresponding parallel in the 1998 Act, it has been a hot topic throughout the passage of the Bill and the Government welcome the insightful debates on it that took place in Committee. Those debates have influenced our thinking on aspects of the clause and I will elaborate on the amendments we have tabled in response to concerns raised by noble Lords.

By way of background, Clause162(3) and (4) provide a number of defences for circumstances where reidentification may be lawful, including where it was necessary for the prevention or detection of crime, to comply with a legal obligation, or was otherwise justified as being in the public interest. Further defences are available where the controller responsible for de-identifying the personal data, or the data subjects themselves, consented to its reidentification.

As noble Lords will recall, concerns were raised in Committee that researchers who acted in good faith to test the robustness of an organisation's de-identification mechanisms may not be adequately protected by the defences in the current clause. Although we continue to believe that the public interest defence would be broad enough to cover this type of activity, we recognise that the perception of a gap in the law may itself be capable of creating harm. We therefore tabled Amendments 151A, 156A and 161A to fix this. These amendments introduce a new, bespoke defence for those for whom reidentification is a product of their testing of the effectiveness of the de-identification systems used by other controllers.

A number of safeguards are included to prevent abuse. I particularly draw noble Lords' attention to the requirement to notify either the original controller or the Information Commissioner. In addition, the researcher cannot intend to cause, or threaten to cause, damage or distress to a legal person. That means, for example, that those self-styled researchers who attempt

[Lord Ashton of Hyde]
to use their discovery to extort money from either the data controller or the data subjects they have reidentified are not protected by this new defence.

We fully appreciate the importance of the work undertaken by legitimate security researchers. I assured noble Lords in Committee that it was in no way our intention to put a halt on this activity where it is done in good faith, and the amendments I am moving today make good on that commitment. On that basis, I beg to move.

Lord Clement-Jones (LD): My Lords, I thank the Minister. We on these Benches had considerable activity from the academic community, security researchers and so on. I am delighted that the Minister has reflected those concerns with the new amendments.

Lord Stevenson of Balmacara (Lab): My Lords, I echo the noble Lord's words. We also welcome these amendments. As has been said, this issue was raised by the academic community, whose primary concern was that the way the Bill had originally been phrased would make important security research illegal and weaken data protection for everyone by that process. It would also mean that good and valid research going on in our high-quality institutions might be at risk.

I do not in any sense want to question the amendments' approach, but I have been in further correspondence with academics who have asked us to make a few points. I am looking for a sense that the issues raised are being dealt with. Either a letter or a confirmation that these will be picked up later in the process of the Bill is all that is necessary.

First, it is fairly common-sense to say that companies probably would not be very happy if a researcher picks up that they are not doing what they say on the tin—in other words, if their claim that their data has been anonymised turns out not to be the case. Therefore, proposed new subsection (2)(b) may well be used against researchers to threaten or shut down their work. The wording refers to "distress" that might be caused, but,

"without intending to cause, or threaten to cause, damage or distress to a person",

seems a particularly weak formulation. If it is only a question of distress, I could be distressed by something quite different from what might distress the noble Lord, who may be more robust about such matters. I think that is a point to take away.

Secondly, we still do not have, despite the way the Minister introduced the amendment, definitions in the Bill that will work in law. "Re-identification", which is used in the description and is part of the argument around it, is still not defined. Therefore, in proposed new Clause 161A(3), as mentioned by the noble Lord who introduced the amendment, the person who,

"notified the Commissioner or the controller responsible for de-identifying the personal data about the re-identification",

has to do this,

"without undue delay, and … where feasible, not later than 72 hours after becoming aware of it".

That is a very tight timetable. Again, I wonder if there might be a bit more elasticity around that. It does say "where feasible", but it puts rather tight cordon around that.

We are trying to make it safe for researchers and data scientists to report improperly de-identified data, but in the present arrangements the responsibility for doing all this lies with the researcher. We are asking a researcher to go to court, perhaps, and defend themselves, including arguing that they have satisfied Clause 162(2)(a) and (b) and Clause 162(3)(a), (b) and (c), which is a fairly high burden. All in all, we just wonder whether how this has been framed does the trick satisfactorily. I would be grateful for further correspondence with the Minister on this point.

Finally, there is nothing in this amendment about industry. It may not be necessary but it raises a question that has been picked up by a couple of people who have corresponded with us. The burden, again, is on the researcher. Is there not also a need to try to inculcate a culture of transparency in the anonymisation processes which are being carried out in industry? In other words, if there is a duty on researchers to behave properly and do certain things at a certain time, should there not also be a parallel responsibility, for example, on companies to properly and transparently anonymise the data? If there is no duty for them to do it properly, what is in it for them? It may well be that that is just a natural aspect of the work they are doing, but maybe the Government should reflect on whether they are leaving this a little one-sided. I put that to the Minister and hope to get a response in due course.

Lord Ashton of Hyde: I thank the noble Lord, Lord Clement-Jones, for his support on this. I accept that there may be things to look at that the noble Lord, Lord Stevenson, has mentioned. It is better to consider those things properly rather than give an answer off the top of my head at the Dispatch Box. I certainly commit to taking those points back and having a look at them. It may be that, when we correspond, something can take place in another place. In the meantime, I beg to move.

Amendment 151A agreed.

Amendments 152 to 161

Moved by ***Lord Ashton of Hyde***

152: Clause 162, page 91, line 16, after "court" insert "or tribunal"

153: Clause 162, page 91, line 20, leave out "the person acted in the reasonable belief that"

154: Clause 162, page 91, line 21, at beginning insert "the person acted in the reasonable belief that"

155: Clause 162, page 91, line 26, at beginning insert "the person acted in the reasonable belief that"

156: Clause 162, page 91, line 31, at end insert ", or

( ) the person acted—

(i) for the special purposes,

(ii) with a view to the publication by a person of any journalistic, academic, artistic or literary material, and

(iii) in the reasonable belief that in the particular circumstances the re-identification was justified as being in the public interest."

156A: Clause 162, page 91, line 31, at end insert ", or

( ) the effectiveness testing conditions were met (see section (Re-identification: effectiveness testing conditions))."

157: Clause 162, page 91, line 42, after "court" insert "or tribunal"

158: Clause 162, page 91, line 46, leave out "the person acted in the reasonable belief that"

159: Clause 162, page 91, line 47, at beginning insert "the person acted in the reasonable belief that"

160: Clause 162, page 92, line 1, at beginning insert "the person acted in the reasonable belief that"

161: Clause 162, page 92, line 5, at end insert ", or

( ) the person acted—

(i) for the special purposes,

(ii) with a view to the publication by a person of any journalistic, academic, artistic or literary material, and

(iii) in the reasonable belief that in the particular circumstances the processing was justified as being in the public interest."

Amendments 152 to 161 agreed.

Amendment 161A

Moved by ***Lord Ashton of Hyde***

161A: After Clause 162, insert the following new Clause—

"Re-identification: effectiveness testing conditions

(1) For the purposes of section 162, in relation to a person who re-identifies information that is de-identified personal data, "the effectiveness testing conditions" means the conditions in subsections (2) and (3).

(2) The first condition is that the person acted—

(a) with a view to testing the effectiveness of the de-identification of personal data,

(b) without intending to cause, or threaten to cause, damage or distress to a person, and

(c) in the reasonable belief that, in the particular circumstances, re-identifying the information was justified as being in the public interest.

(3) The second condition is that the person notified the Commissioner or the controller responsible for de-identifying the personal data about the re- identification—

(a) without undue delay, and

(b) where feasible, not later than 72 hours after becoming aware of it.

(4) Where there is more than one controller responsible for de-identifying personal data, the requirement in subsection (3) is satisfied if one or more of them is notified."

Amendment 161A agreed.

Clause 164: The special purposes

Amendment 162

Moved by ***Lord Ashton of Hyde***

162: Clause 164, page 93, line 17, leave out paragraph (c)

Amendment 162 agreed.

Clause 165: Provision of assistance in special purposes proceedings

Amendment 163

Moved by ***Lord Ashton of Hyde***

163: Clause 165, page 93, line 37, after second "as" insert "reasonably"

Amendment 163 agreed.

9 pm

Clause 166: Staying special purposes proceedings

Amendment 164

Moved by ***Lord Ashton of Hyde***

164: Clause 166, page 94, line 34, leave out "literary or artistic" and insert "artistic or literary"

Amendment 164 agreed.

Amendment 165 had been withdrawn from the Marshalled List.

Clause 169: Regulations and consultation

Amendments 166 to 170

Moved by ***Lord Ashton of Hyde***

166: Clause 169, page 95, line 36, leave out from beginning to second "regulations" in line 37 and insert—

"(2) Before making regulations under this Act, the Secretary of State must consult—

(a) the Commissioner, and

(b) such other persons as the Secretary of State considers appropriate.

(2A) Subsection (2) does not apply to"

167: Clause 169, page 96, line 4, at end insert—

"( ) Subsection (2) does not apply to regulations made under section 17 where the Secretary of State has made an urgency statement in respect of them."

168: Clause 169, page 96, line 15, at end insert—

"(5A) Where regulations under this Act are subject to "the made affirmative resolution procedure"—

(a) the statutory instrument containing the regulations must be laid before Parliament after being made, together with the urgency statement in respect of them, and

(b) the regulations cease to have effect at the end of the period of 120 days beginning with the day on which the instrument is made, unless within that period the instrument is approved by a resolution of each House of Parliament.

(5B) In calculating the period of 120 days, no account is to be taken of any time during which—

(a) Parliament is dissolved or prorogued, or

(b) both Houses of Parliament are adjourned for more than 4 days.

(5C) Where regulations cease to have effect as a result of subsection (5A), that does not—

(a) affect anything previously done under the regulations, or

(b) prevent the making of new regulations."

169: Clause 169, page 96, line 18, at end insert "or the made affirmative resolution procedure"

170: Clause 169, page 96, line 21, at end insert—

"( ) In this section, "urgency statement" has the meaning given in section 17(4)."

Amendments 166 to 170 agreed.

Clause 170: Power to reflect changes to the Data Protection Convention

Amendments 171 and 172

Moved by ***Lord Ashton of Hyde***

171: Clause 170, page 96, line 29, leave out paragraphs (a) and (b) and insert—

"(a) to amend or replace the definition of "the Data Protection Convention" in section 2;

(b) to amend Chapter 3 of Part 2 of this Act;

(c) to amend Part 4 of this Act;

(d) to make provision about the functions of the Commissioner, courts or tribunals in connection with processing of personal data to which Chapter 3 of Part 2 or Part 4 of this Act applies, including provision amending Parts 5 to 7 of this Act;

(e) to make provision about the functions of the Commissioner in connection with the Data Protection Convention or an instrument replacing that Convention, including provision amending Parts 5 to 7 of this Act;

(f) to consequentially amend this Act."

172: Clause 170, page 96, line 32, at end insert—

"( ) Regulations under this section may not be made after the end of the period of 3 years beginning with the day on which this Act is passed."

Amendments 171 and 172 agreed.

Clause 171: Prohibition of requirement to produce relevant records

Amendment 173

Moved by ***Lord Ashton of Hyde***

173: Clause 171, page 97, line 8, after "court" insert "or tribunal"

Amendment 173 agreed.

Amendment 174 had been withdrawn from the Marshalled List.

Clause 173: Representation of data subjects

Amendment 175

Moved by ***Lord Clement-Jones***

175: Clause 173, page 98, line 26, at end insert—

"(2A) A body or other organisation which meets the conditions in subsections (3) and (4) may also exercise some or all of the rights under subsection (2) independently of the data subject's authority.

(2B) Subsection (2A)—

(a) applies in respect of infringements occurring (or alleged to have occurred) whether before or after the commencement of this section; and

(b) is without prejudice to the generality of any other enactment or rule of law which permits the bringing of representative proceedings."

Lord Clement-Jones: My Lords, as a result of the vagaries of grouping, redrafting and so on, I am in danger of being the tail that wags the dog on this group of amendments, especially as Amendment 175 deals with the processing of personal data to which the GDPR does not apply. Amendment 175A is a much broader amendment, dealing with the implementation of not only article 82 but other aspects that are extremely desirable.

I know that the Minister will be fairly brief in response, so I will not rehearse all the arguments we put forward in Committee. The noble Lord, Lord Stevenson, led on this group of amendments and put forward many of the arguments made by a great number of organisations, such as Which?, Age UK, Privacy International and the Open Rights Group, for this kind of group representation, along the lines of the super-complaints in the Consumer Rights Act, which are highly desirable. I recommend—which shortens the job I have of introducing this amendment—that the Minister reads the blog on the Privacy International site written by the chair emeritus of PI's board of trustees, Anna Fielder. She puts the arguments extremely well and wrestles with some of the points that the Minister made in Committee, which is extremely useful. I am certainly not going to go through all that, let alone the polling data, which I think refutes quite a lot of what the Minister said. This is extremely desirable. I support very strongly what the noble Lord, Lord Stevenson, has tabled. It is quite comprehensive in many ways. I look forward to his introduction of his amendment.

Finally, a very important factor in all of this is the support of the Information Commissioner. She has come to the conclusion, as she wrote very convincingly in her second memorandum, that we need to have this kind of right of representation where consent has not necessarily been obtained. I think we should listen very carefully to what she has to say. I beg to move.

Lord Stevenson of Balmacara: My Lords, I am grateful to the noble Lord, Lord Clement-Jones, for his introduction and for paving the way to the comments I want to make. He suggested further reading but I might be able to shorten the reading list for the Minister, because I am going to cite a bit of what has been sent as part of that package. We went through most of the main issues and had a full response from Ministers the last time this was raised, in Committee. But since then we have of course amended the Bill substantially to provide for a significant amount of age-appropriate design work to be done to protect children who, either lawfully or unlawfully as it might be, come into contract arrangements with processors of their data.

That data processing will almost certainly be done properly under the procedures here. We hope that, within a year of Royal Assent, we will see the fruits of that coming through. But after that, we will be in uncharted territory as far as younger persons and the internet are concerned. They will obviously be on there and using substantial quantities of data—a huge amount, as is picked up when one sees one's bills and how much time they spend on downloading material from the internet and has to find the wherewithal to provide for them. But I am pretty certain there will also be occasions where things do not work out as planned. They may well find that their data has been misused or sold in a way they do not like, or processed in a way which is not appropriate for them. In those circumstances, what is the child to do? This is why I want to argue that the current arrangements, and the decision by the Government not to allow for the derogation provided for in the GDPR under article 82 to apply, may have unforeseen consequences.

I am grateful to the noble Lord, Lord Clement-Jones, and the noble Baroness, Lady Kidron, for supporting Amendment 175A, and I look forward to her comments later on, particularly in relation to children's use. It is

important to recognise that, if there is a derogation and it is not taken up, there has to be a good reason for that. The arguments brought up last time were largely along the lines that it would be overcomplicated to have two types of approach and that, in any case, there was sufficient evidence to suggest that individual consumers would prefer to be represented when they do so—of course, that falls away when we talk about children.

In Amendment 175A, we are trying to recognise two things: first, the right of adults to seek collective redress on issues taken up on their behalf by bodies that have a particular skill or knowledge in that area and, secondly, to do this without the need to form an association with an individual or group, or a particular body that has a responsibility for it. The two parts of the amendment will provide a comprehensive regime to allow victims of data breaches to bring proceedings to vindicate rights to proper protection of their personal data, always bearing in mind that children will have the additional cover provided by theirs being a third-party involvement. We hope that there will not be serious breaches of data protection. We think that the Bill is well constructed and that in most cases it will be fine, but the possibility that it will happen cannot be ignored. This parallels other arrangements, including those in the Consumer Rights Act 2015, which apply to infringements of competition law—not a million miles away from where we are here—and for which there is a procedure in place.

To anticipate where the Government will come from on this, first, I think they will say that there is a lot going on here and no evidence to suggest that it should work. I suggest to them that we would be happy with a recognition that this issue is being applied elsewhere in Europe and that there is a discrepancy if it is not in Britain. Secondly, there may be a good case for waiting some time until we understand how the main provisions work out. But a commitment to keep this under review, perhaps within a reasonable time after the commencement of the procedures—particularly in relation to children and age-appropriate design—to carry out a formal assessment of the process and to consider its results would, I think, satisfy us. I accept the argument that doing too much too soon might make this difficult, but the principle is important and I look forward to the responses.

Baroness Kidron (CB): My Lords, I too want to speak to this amendment, to which I have added my name, and I acknowledge and welcome the support of the Information Commissioner on this issue. I support the collective redress of adults but I specifically want to support the noble Lord, Lord Stevenson, on this question of children.

At Second Reading and again in Committee I raised the problem of expecting a data subject who is a child to act on their own behalf. Paragraph (b) of proposed new subsection (4B) stipulates that,

"in the case of a class consisting of or including children under the age of 18, an individual may bring proceedings as a representative of the class whether or not the individual' s own rights have been infringed".

This is an important point about the right of a child to have an advocate who may be separate from that child and whose own rights have not been abused. Children cannot take on the stress and responsibility of representing themselves and should not be expected to do so, nor should they be expected to police data compliance. Children whose data is processed unlawfully or who suffer a data breach may be unaware that something mischievous, harmful or simply incorrect has been attached to their digital identity. We know that data is not a static or benign thing and that assumptions are made on what is already captured to predict future outcomes. It creates the potential for those assumptions to act as a sort of lead boot to a child's progress. We have to make sure that children are not left unprotected because they do not have the maturity or circumstances to protect themselves.

As the noble Lord, Lord Stevenson, said, earlier this evening, the age-appropriate design code was formally adopted as part of this Bill. It is an important and welcome step, and I thank the Minister and the new Secretary of State Matt Hancock, whose appointment I warmly welcome, for their contribution to making that happen. Children's rights have been recognised in the Bill, but rights are not meaningful unless they can be enacted. Children make up nearly one-third of all users worldwide, but rarely do they or the vast majority of their parents have the skills necessary to access data protection.

The amendment would ensure that data controllers worked to a higher standard of data security when dealing with children's data in the first place. Rather than feeling that the risk of a child bringing a complaint was vanishingly low, they would know that those of us who advocate for and protect the rights of children were able to make sure that their data was treated with the care, security and respect that we all believe it deserves.

Lord Ashton of Hyde: My Lords, I am very grateful to noble Lords for their comments. Although I have to say at the outset that we have some reservations about these amendments, I think we might be able to find a way forward this evening. I have listened to the noble Lords, Lord Stevenson and Lord Clement-Jones, and taken their remarks on board, but I have especially listened to the noble Baroness, Lady Kidron, who spoke about children. We have some experience of her input in this Bill. I obviously take a lot of notice of what the noble Lords, Lord Stevenson and Lord Clement-Jones, say but, as you know, familiarity and all that, so I have certainly listened especially to the noble Baroness, Lady Kidron.

The Government are sympathetic to the idea of facilitating greater private enforcement, but we continue to believe that the Bill as drafted provides significant and sufficient recourse for data subjects. In our view, there is no need to invoke article 80(2) of the GDPR, with all the risks and potential pitfalls that that entails. To recap, the GDPR provides for, and the Bill allows, data subjects to mandate a suitable non-profit organisation to represent their interests following a purported infringement. The power will, in other words, be in their hands. They will have control over which organisation is best placed to represent their interests, what action to take and what remedy to seek. The GDPR also places robust obligations on the data controller to notify the data subject if there has been a breach

[Lord Ashton of Hyde]
which is likely to result in a high risk to the data subject's rights and freedoms. This is almost unprecedented and quite different from, say, consumer law where compulsory notification of customers is rarely proportionate or achievable.

These are very significant developments from the 1998 Act and augment a rapidly growing list of enforcement options available to data subjects. That list already includes existing provisions for collective redress, such as group litigation orders, which were used so effectively in the recent Morrisons data breach case, and the ability for individuals and organisations to independently complain to the Information Commissioner where they have concerns about how personal data is being processed.

What these initiatives have in common is that they, like the GDPR as a whole, seek to empower data subjects and ensure they receive the information they need to enforce their own data rights. By comparison, Amendments 175 and 175A would go much further. I stress that, as I have already said, we are not against greater private enforcement, and I have borne in mind the points the noble Baroness made about children. We also have reservations about the drafting and purpose of these amendments, all of which I could of course go through at length, if the House wishes, but in view of what I am about to say, I hope that will not be necessary.

Since Committee, the Government have reflected on the principles at stake here and agree it would be reasonable for a review to be undertaken, two years after Royal Assent, of the effectiveness of Clause 173 as it is currently drafted. The Government are fully prepared to look again at the issue of article 80(2) in the context of that review. We are serious about this. We will therefore amend the Bill in the other place to provide for such a review and to provide the power for the Government to implement its conclusions.

In view of that, I would be very grateful if the noble Lord will withdraw his amendment this evening and other noble Lords do not press theirs.

Baroness Kidron: Before the Minister sits down, can I get absolute reassurance from him that this is not pushing it into the future, where it will languish? Will the Government be looking to this review to actually solve the problem that we have put forward on behalf of children?

Lord Ashton of Hyde: It absolutely will not and cannot languish, because we are going to put in the Bill—so on a statutory basis—that this has to be reviewed in two years. It will not languish. As I said, if we were just going to kick it into the long grass, I would not have said what I just said, which everyone can read. We would not have put it in the Bill and made the commitments we have made tonight.

Lord Clement-Jones: My Lords, I thank the Minister for his response and am only sorry that I, rather than the noble Lord, Lord Stevenson, have the privilege of responding. The Minister came back, I thought, very helpfully. The noble Baroness, Lady Kidron, made a superb case for these rights to be implemented earlier rather than later. If we are creating all those new rights for children under the Bill, as she says, we must have a mechanism to enforce them. I believe the Minister said that the review would be two years after the Bill comes into effect. I hope that that is an absolute—

Lord Ashton of Hyde: To be clear, two years after Royal Assent.

Lord Clement-Jones: Let us hope that that is treated as an important timetable. I was interested that the Minister expressed his sympathy—I know that that was genuine—but then went on to talk about risks and pitfalls, and very significant developments, which all sounded a bit timid. I understand that we are in relatively novel territory, but it sounded rather timid in the circumstances, especially where the rights of children are concerned.

One point the Minister did come back on was group litigation orders. Class actions are very different from the kinds of representative action that we are talking about under these amendments. For example, they would be anonymous and the consent of the data subject would not have had to be acquired, unlike with a class action. They are very different, which is worth pointing out. There are some egregious issues in terms of the use of people's data—the Equifax case, Uber, and so on. We need to remind ourselves that these are really important data breaches and there need to be remedies available. We, on this side of the House, and those on the Benches of the noble Baroness, Lady Kidron, will be vigilant on this aspect.

The one area of clarification that I did not receive from the Minister was whether this would apply to processing of personal data that was not under the GDPR. Will it be under the applied GDPR, and would that apply?

Lord Ashton of Hyde: I think it applies to the whole thing, but if I am wrong, I will certainly write to everyone who is here.

Lord Clement-Jones: In that case, I beg leave to withdraw the amendment.

Amendment 175 withdrawn.

Amendment 175A not moved.

Clause 175: Framework for Data Processing by Government

Amendment 176

Moved by ***Lord Stevenson of Balmacara***

176: Clause 175, leave out Clause 175 and insert the following new Clause—

"Framework for Data Processing by Government

(1) The Commissioner must prepare a document, called the Framework for Data Processing by Government, which contains guidance about the processing of personal data in connection with the exercise of functions of—

(a) the Crown, a Minister of the Crown or a United Kingdom government department, and

(b) a person with functions of a public nature who the Commissioner recommends is specified or described in regulations made by the Secretary of State.

(2) The document may make provision relating to all of those functions or only to particular functions or persons.

(3) The document may not make provision relating to, or to the functions of, a part of the Scottish Administration, the Welsh Government, a Northern Ireland Minister or a Northern Ireland department.

(4) The Commissioner may from time to time prepare amendments of the document or a replacement document.

(5) Before preparing a document or amendments under this section, the Commissioner must consult—

(a) the Secretary of State, and

(b) any other person the Commissioner considers it appropriate to consult.

(6) Regulations under subsection (1)(b) are subject to the affirmative resolution procedure.

(7) In this section, "Northern Ireland Minister" includes the First Minister and deputy First Minister in Northern Ireland."

Lord Stevenson of Balmacara: My Lords, the Government introduced quite late in the proceedings in Committee a group of amendments that set up a parallel system under which data processing undertaken by government departments could be considered to be governed. Our Amendment 176 attempts to ask some questions, and in that sense it is a probing amendment. It probably does not work as it stands, on reflection, but it raises important points. Because the Government introduced the amendments so late in the day, I feel justified in asking for a response to some of our questions around them. The scrutiny that we could have given to the amendments did not take place, and I am grateful to the noble Lord, Lord Clement-Jones, for adding his name to the amendment and look forward to his comments later.

The main purpose of the amendment is to get on record from the Secretary of State a set of answers to questions. To be clear, we are talking about the framework for data processing by government to which the original amendments apply, and to which our amendment refers, covering all data held by any public body, including the NHS. It is both outside the ICO's jurisdiction and under the direct control of Ministers. The courts are bound by the framework, as are tribunals, and a special case exists only for international law. I am not quite sure how that works, so maybe we can get some answers on that. There may well be updates, but if there are changes, they will be applied retrospectively. It is quite a significant package in terms of powers. I understand that there may be nothing wrong with that if everything else is working. In a sense, if one wants efficient government and effectiveness, one is asking for such things to be in place. I am not criticising that.

There are questions. First, on the name, why is it a framework and not a code of practice? Codes of practice are defined in the Bill and have considerable consequences as a result. There is a standard for developing them and a process under which they take place. There are regulatory arrangements and the involvement of Parliament, but that does not apply to the framework. In other words, the Government's own data does not go through the processes that apply to other data.

Why do the Government's proposals exempt public sector processing from normal data protection law? Surely if the concern is about making sure that a subject's data is always looked after properly, and data controllers, whoever they are, are doing it in accordance with the procedures set out at length by the Bill, in the GDPR and in the derived legislation that will take place—if we leave—under Brexit, all we are getting is a way of keeping people out of any consideration regarding the data that is held by government. Citizens' data should really belong to citizens and we should not have a situation where it is looked after by Ministers on behalf of Ministers and there is no external view.

One could make a strong case—I am not necessarily doing that, but others have—that the Secretary of State has the power to create their own framework for the data protection of their own data and their own department. They can ignore completely what the Information Commissioner may say about that framework—she has no locus in that. The framework can be brought to Parliament but it is a negative procedure, not an affirmative one, so it is very difficult to scrutinise. We can vote against it; we can certainly discuss it if we see it in time, but it will not be at the same level of scrutiny as perhaps applies to other matters. Barriers can be raised, and the ICO's enforcement mechanisms can be fettered, extended or changed.

I am sure that the Minister will have good answers to that and I am in no sense trying to attack the basic principle. I just wonder whether there is not a case here for Caesar's wife—excuse the old-fashioned language, but it is a quotation, not a reference. Caesar's wife was always required to be above suspicion, above any other public person in Rome of the day. I say that with detailed knowledge having just been to the RSC's performances of the Cicero plays, as I think I already mentioned. Sorry if I am boring people.

Nevertheless, it raises in one's mind the issues of standards and propriety in public life in a forceful way. Blood was more common then than it might be today, but the issue is right. If you are in a public position and a public responsibility is placed on you, you must not only be above reproach, you must be seen to be above reproach. I am not sure that the government amendments satisfy that. I beg to move.

Viscount Hailsham (Con): My Lords, I have only two brief observations to make, one supportive and one otherwise. My supportive observation is that I am very much in favour of the use of the affirmative resolution procedure for the approval of regulations, rather than the negative one. I add in parenthesis that I have always believed that we in Parliament should be able to amend under the affirmative resolution procedure. When we come to the European Bill, that will be particularly important, but that is for another day.

Where I disagree with the noble Lord is on his proposal that the commissioner should be responsible for preparing the document. That seems to me essentially a matter for the Secretary of State, because of the principle of ministerial responsibility. Ministers can be questioned and quizzed in a way which is utterly

[Viscount Hailsham]
impossible for Parliament to do with the commissioner. There is also a small technical point. If a Minister has to come to Parliament—for example, under an affirmative resolution procedure—to argue in favour of regulations which he or she has not made, but which have, rather, been made by the commissioner, that could be at least a trifle embarrassing.

Lord Clement-Jones: My Lords, I hear what the noble Viscount said about the amendment, but the problem is that even the affirmative resolution procedure is not necessarily a good way to test the framework. The noble Lord, Lord Stevenson, was unusually kind about the Government's framework. As he said, the Secretary of State can produce a framework that applies data protection to his own department; ignore what the Information Commissioner says about the framework; lay his own framework for Parliament through the negative procedure—I take the noble Viscount's point about the affirmative procedure—which means it is very unlikely to get much scrutiny; and raise barriers against the ICO's enforcement mechanism. He can then, as part and parcel of the framework, extend or introduce frameworks to include any other public sector body. Frankly, the Secretary of State can pretty much do what he or she wants. We should not be saying that the framework is essentially like a statutory code of practice; it is a very different animal.

This is our first debate on the architecture that the Government have imposed. In Committee the Minister produced a whole raft of amendments introducing the framework and we did not have a chance to scrutinise it properly. The Information Commissioner is not very happy with this architecture either. That is utterly clear. It is not just opposition parties or organisations such as medConfidential that are unhappy. The ICO has stated:

"The Commissioner understands the needs for government departments and public bodies to be clear about the legal basis for undertaking the functions and this is particularly true when processing personal data. However the provisions as drafted appear to go beyond this limited ambition and create different risks that must also be considered. She has made clear her concerns to government and these are set out below".

I should very much like to hear what sort of dialogue the Government have had with the ICO because, frankly, at the moment they seem to be overriding any powers or involvement that she has in this framework. I am afraid that I am raising the temperature slightly at this time of night, but the framework for government data protection is not in fact data protection at all.

Earl Attlee (Con): To regain some favour with my noble friend the Minister, may I just say a little word about affirmative orders? It is tempting to say that we should have affirmative procedure but, at the end of the day, we will have at some point to debate those affirmative orders, and they keep mounting up. In respect of negative instruments, there is a praying period and we can flag them up for debate and have them debated in the Chamber in exactly the same way as we can an affirmative order.

Lord Stevenson of Balmacara: But I think that the noble Earl would accept that the last time a negative instrument was prayed against successfully was something like 1940—certainly a long time ago—and it was about the use of petroleum with open flames.

9.30 pm

Earl Attlee: The noble Lord may be right but, of course, it is equally very rare that we turn down an affirmative order.

Lord Ashton of Hyde: My Lords, I am grateful to all those who have participated. I take on board what the noble Lord, Lord Clement-Jones, said about our brief debate on the final day in Committee, so we can do a bit tonight. I hope that by the end I will be able to convince noble Lords that this is not quite as sinister as has been made out. I am going to duck, if I may, the argument about the affirmative procedure and whether it should be amendable, particularly given other Bills that are coming before this House soon. After all, I was only reappointed yesterday.

It is helpful to have this opportunity to further set out the purpose and operation of Clauses 175 to 178 and, in doing so, explain why the amendments in this group are unnecessary—except, of course, the government amendments. As noble Lords will now be aware, the Bill creates a comprehensive and modern scheme for data protection in the UK. No one is above the law, including the Government. That partly answers the point made by the noble Lord, Lord Clement-Jones. The Secretary of State cannot do whatever she or he wants because they are subject to the GDPR and the Bill, like everyone else. When I go further and explain the relationship between this framework and the ICO's guidance, if it is issued, I hope that will further reassure noble Lords.

While we are on this subject, the reason the Bill uses the term "framework" is that it uses the term "code of practice" to refer to a number of documents produced by the Information Commissioner. As this document will be produced by the Government, we felt that it would be clearer not to use that term in this case. It is purely a question of naming conventions—nothing significant at all.

Inherent in the execution of the Government's functions is a requirement to process significant volumes of personal data, whether in issuing a passport or providing information on vulnerable persons to the social services departments of local authorities. The Government recognise the strong public interest in understanding better how they process that data. The framework is therefore intended to set out the principles and processes that the Government must have regard to when processing personal data. Government departments will be required to have regard to the framework when processing personal data. This is not a novel concept. Across the country, organisations and businesses produce guidance on data processing that addresses the specific circumstances relevant to them or the sector in which they operate. This sector, or organisation-specific guidance, coexists with the overarching guidance provided by the Information Commissioner.

This framework adopts a similar approach; it is the Government producing guidance on their own processing of data. The Information Commissioner was consulted during the preparation of these clauses and will be

consulted during the preparation of the framework itself to ensure that the framework complements the commissioner's high-level national guidance when setting out more detailed provision for government.

Lord Clement-Jones: My Lords, the Minister said that the Information Commissioner was consulted, but what was her view? Can the Minister put on record what the Information Commissioner's view about the final architecture was? She has made it fairly clear to us that this is not satisfactory, as far as she is concerned.

Lord Ashton of Hyde: When I said that she was consulted, I said what I meant. This is one of the few areas in the whole Bill, I think, where we do not have complete agreement with the Information Commissioner. I think that she is worried about complications regarding independence and the extent of her authority in this. I am not pretending that she is completely happy with this, but I hope that I will address how the two interlink and we can come back to this if the noble Lord wants. I acknowledge his point that she is not completely happy with this but, as I said before, it is one of the few areas in the whole Bill where that is the case. Certainly, we have a very good relationship with the Information Commissioner, as evidenced earlier this evening by her agreement on pay and flexibility. Importantly though, whatever she thinks of it, she will be consulted during the preparation of the framework itself to ensure that it complements the commissioner's high-level national guidance when setting out more detailed provision for the Government.

As I explained in Committee, the Government's view is that the framework will serve to further improve the transparency and clarity of existing government data processing. The Government can and should lead by example on data protection. Amendment 176 is designed to address concerns about the potential for confusion if the framework is produced by the Government, I respectfully suggest that these concerns are misplaced. The Secretary of State's framework will set out principles for the specific context of data processing by government. It will, as I have set out, complement rather than supplant the commissioner's statutory codes of practice and guidance, which will, by necessity, be high level and general as they will apply to any number of sectors and organisations.

Requiring the commissioner to dedicate time and resources to producing guidance specifically for the Government, as the noble Lord's amendment would require, would hardly seem to the best use of her resources. Just like a sectoral representative body, it is the Government who have the experience and knowledge to devise a framework that speaks to their own context in more specific terms.

Lord Clement-Jones: I am sorry to keep interrupting the Minister, but is he therefore saying that the frameworks cover government and that the ICO's codes of practice cover government as well?

Lord Ashton of Hyde: Absolutely. The framework exists like other sectoral guidance that is produced, under the overarching guidance produced by the Information Commissioner. In a minute I will provide further reassurance on how the two interlink.

As I have already set out, the Government will consult the commissioner in preparing the framework. Importantly, she is free to disregard the Government's framework wherever she considers it irrelevant or to disagree with its contents.

Lord Stevenson of Balmacara: I know that we should not be intervening like this on Report, but the phrasing that the Minister just used is of interest—to the noble Lord, Lord Clement-Jones, as well, I think. What does "irrelevant" mean? Can the Minister unpick that a little? Either the Secretary of State has the power to do something, or not. If that power is conditional on the ICO having given broad agreement to it, under what conditions can the ICO intervene? Can it be because the commissioner regards it as irrelevant? What does that mean?

Lord Ashton of Hyde: I think it means that, if the Information Commissioner were considering the case of a data breach committed by the Government, she would normally take the framework into account, as she would take into account the guidance that other sectors produce. If, however, there were circumstances in which she did not consider that it was relevant for her investigation into whether the law had been broken, given that she is the enforcer of the law, she would be free to disregard it. The words "must take into account" mean that she is not bound by the provision but has to take it into account. She is, after all, the regulator who sits above all data processors.

I reiterate that the guidance will provide reassurance to data subjects about the approach the Government take to processing data and the procedures that they follow when doing so. It will help further strengthen the Government's compliance with the principles of the GDPR.

Amendments 177 and 178, in the name of the noble Lord, Lord Clement-Jones, concern the process for making the guidance. The guidance may be revised if Parliament does not approve it or if it needs adjustment to be compatible with international obligations. It would be odd and irresponsible to abandon the problem these clauses are trying to resolve if Parliament does not approve the guidance. A revised version should be prepared. Similarly, data protection rules are often international in nature and indeed this Bill is based on three international instruments, so revising the guidance to maintain compatibility must be the sensible approach.

Amendments 179 and 180 seek to limit the effect of the guidance. Persons must have regard to the guidance but there may be good reasons why processing data in a particular set of circumstances can lawfully be conducted in a manner outside the guidance. As long as regard has been had to the guidance but good reasons for departing from it or for its non-applicability have been established, it is perfectly proper and within the norm of usual public law principles to do so. Clause 178 ensures that those principles are enforced.

In our view, the existence of a framework in no way impinges upon the commissioner's independence. Clause 178(5) simply requires the commissioner to take a provision in the Government's framework into account if it appears to her to be relevant to the matter in hand. For example, if the commissioner were to

[Lord Ashton of Hyde]
investigate a data breach by a government department, she may consider it relevant to consider whether or not that department had applied the principles set out in the framework. It is standard practice for the Information Commissioner to take into account relevant sectoral guidance when examining issues related to the processing of personal data by a particular sector. Clause 178(5) simply reflects that practice. Furthermore, nothing in Clause 178(5) constrains the Information Commissioner in any way. She is free to disregard the Government's framework wherever she considers it irrelevant or to disagree with its contents, as I said.

Government Amendments 184A and 184B are technical amendments and are similarly designed to assist with the Government's compliance with the GDPR. Most bodies falling within the Bill's definition of government departments are Crown bodies. Such bodies cannot contract with each other as the Crown cannot contract with itself. This constitutional quirk means that the usual GDPR requirement that controllers and processors must have a contractual relationship is impossible to satisfy where one department is processing on behalf of another. These amendments resolve this situation by allowing departments to enter into a memorandum of understanding between each other instead and remain GDPR-compliant.

On the basis of my comments, I hope that the noble Lord will feel able to withdraw his amendment and support the government amendments in this group.

Lord Stevenson of Balmacara: I thank the Minister very much indeed for his very full response. I will read it carefully in *Hansard* but at this stage, although it is a rather complicated issue, I understand where he is coming from and I think we can probably let it rest at this point. If there is anything else, I will write to him rather than prolong the discussion today.

I opined that negative resolutions were rarely voted down and cited 1940 as the last occasion that that happened, but I was wrong. Some 40 years ago on 24 October 1979, the Paraffin (Maximum Retail Prices) (Revocation) Order 1979 was defeated late at night during what appears to have been rather unsavoury activity by members of the Labour Party who hid in cupboards and things and then jumped out. Mr Hamish Gray, whom Members may recall, was unable to sustain the standing order and it had to be brought back later on—it was all very complicated and *Hansard* is wonderful about it. I beg leave to withdraw the amendment.

Amendment 176 withdrawn.

Clause 176: Approval of the Framework

Amendment 177 not moved.

Clause 177: Publication and review of the Framework

Amendment 178 not moved.

Clause 178: Effect of the Framework

Amendments 179 and 180 not moved.

9.45 pm

Amendment 181

Moved by ***Lord Stevenson of Balmacara***

181: After Clause 178, insert the following new Clause—

"Personal data ethics advisory board and ethics code of practice

(1) The Secretary of State must appoint an independent Personal Data Ethics Advisory Board ("the board") as soon as reasonably practicable after the passing of this Act.

(2) The board's functions, in relation to the processing of personal data to which the GDPR and this Act applies, are—

(a) to monitor further technical advances in the use and management of personal data and their implications for the rights of data subjects;

(b) to protect the individual and collective rights and interests of data subjects in relation to their personal data;

(c) to ensure that trade-offs between the rights of data subjects and the use and management of personal data are made transparently, inclusively, and with accountability;

(d) to seek out good practices and learn from successes and failures in the use and management of personal data;

(e) to enhance the skills of data subjects and controllers in the use and management of personal data.

(3) The board must work with the Commissioner to prepare a data ethics code of practice for data controllers, which must—

(a) include a duty of care on the data controller and the processor to the data subject;

(b) provide best practice for data controllers and processors on measures which, in relation to the processing of personal data—

(i) reduce vulnerabilities and inequalities;

(ii) protect human rights;

(iii) increase the security of personal data; and

(iv) ensure that the access, use and sharing of personal data is transparent, and the purposes of personal data processing are communicated clearly and accessibly to data subjects.

(4) The code must also include guidance in relation to the processing of personal data in the public interest and the substantial public interest.

(5) Where a data controller or processor does not follow the code under this section, the data controller or processor is subject to a fine to be determined by the Commissioner.

(6) The board must report annually to the Secretary of State.

(7) The report in subsection (6) may contain recommendations to the Secretary of State and the Commissioner relating to how they can improve the processing of personal data and the protection of data subjects' rights by improving methods of—

(a) monitoring and evaluating the use and management of personal data;

(b) sharing best practice and setting standards for data controllers; and

(c) clarifying and enforcing data protection rules.

(8) The Secretary of State must lay the report made under subsection (6) before both Houses of Parliament."

Lord Stevenson of Balmacara: My Lords, we can be quite brief on this matter. It is an open secret that both the Government and Her Majesty's loyal Opposition,

joined by others who have signed Amendment 181, were keen to try to move ahead with the idea of setting up a data ethics board or panel and giving it powers and teeth, particularly in light of the recent Budget, in which it was clear that there was money available for it to be established and start spending. We felt that it would be nice to get that going. Unfortunately, the rules of the House are so tight that it has not been possible to find a form of words for the powers that would be used to set up this advisory board which would be sufficiently broad to give a proper basis for the ambitions that we all share for it. On the basis that I think the Government may have something to say about this, I will not extend the discussion on this, because there is so much common ground. I look forward to hearing from the Minister, but to get the debate going I beg to move.

Lord Clement-Jones: My Lords, we are at the last knockings on most of the Bill. It is rather ironic that one of the most important concepts that we need to establish is a new data ethics body—a new stewardship body—called for by the Government in their manifesto, by the Royal Society, by the British Academy and by many others. Many of those who gave evidence to our Select Committee want to see an overarching body of the kind that is set out, and with a code of ethics to go with it. We all heard what the Minister had to say last time; we hope that he can perhaps give us more of an update on the work being carried out in this area.

This should not be and I do not think it will be a matter of party contention; I think there will be a great deal of consensus on the need to have this kind of body, not just for the narrow field of data protection and the use of data but generally, for the wider application in the whole field, whether it is the internet of things or artificial intelligence, and so on. There is therefore a desire to see progress in fairly short order in this kind of area. One of the reasons for that is precisely because of the power of the tech majors. We want to see a much more muscular approach to the use of data by those tech majors. It is coming down the track in all sorts of different varieties. We have seen it in debates in this House; no doubt there will be a discussion tomorrow about social media platforms and their use of news and content and so on. This is therefore a live issue, and I very much hope that the Minister will be able to tell us that the new Secretary of State is dynamically taking this forward as one of the top items on his agenda.

Lord Ashton of Hyde: My Lords, I can certainly confirm that the new Secretary of State is dynamic. In this group we are in danger of violently agreeing with each other. There is a definite consensus on the need for this; whether there will be consensus on the results is another matter. I agree with the analysis given by the noble Lord, Lord Stevenson, that the trouble is that to get this into the Bill, we have to concentrate on data. As the noble Lord, Lord Clement-Jones, outlined, many other things need to be included in this grouping, not least artificial intelligence.

I will briefly outline what we would like to do. For the record, we understand that the use of data and the data-enabled technologies is transforming our society at unprecedented speed. We should expect artificial intelligence and machine learning to inform ever more aspects of our life in increasingly important ways. These new advances have the potential to deliver enormous benefits to society and the economy but, as we are made aware on a daily basis—like the noble Lord, Lord Clement-Jones, I am sure that this will be raised tomorrow in the debate that we are all looking forward to on social media—they are also raising a host of new and profoundly important challenges that we need to consider. One of those challenges, and the focus of this Bill, is protecting people's personal data—ensuring that it is collected, retained and used appropriately. However, the other challenges and opportunities raised by these technologies go far beyond that, and there are many examples that I could give.

Therefore, in the Autumn Budget the Government announced their intention to create a centre for data ethics and innovation to maximise the benefits of AI and data technologies to society and the economy, and to help identify and address the ethical challenges that they pose. The centre will advise the Government and regulators on how they can strengthen and improve the way that data and artificial intelligence are governed. It will also support the effective, innovative and ethical use of data and artificial intelligence so that we maximise the positive impact that these technologies can have on our economy and society.

We are in the process of working up the centre's terms of reference in more detail and will consult on this soon. The issues it will consider are pressing, and we intend to set it up in an interim form as soon as possible, in parallel to this consultation. However, I fully share the noble Lord's view that the centre, whatever its precise form, should be placed on a statutory footing, and I can commit that we will bring forward appropriate legislation to do so at the earliest opportunity. I accept the reasoning from the noble Lord, Lord Stevenson, on why this is not the appropriate place due to the limitations of this Bill, and I therefore hope that he will be able to withdraw his amendment.

Lord Stevenson of Balmacara: I am very grateful to the Minister for that response. That is probably the right way forward, and I beg leave to withdraw the amendment.

Amendment 181 withdrawn.

Clause 184: Disclosure of information to the Tribunal

Amendment 182

Moved by ***Lord Ashton of Hyde***

182: Clause 184, page 103, line 24, leave out from "of" to end of line 29 and insert "—

(a) its functions under the data protection legislation, or

(b) its other functions relating to the Commissioner's acts and omissions.

(2) But this section does not authorise the making of a disclosure which is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

(3) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (2) has effect as if it included a reference to that Part."

Amendment 182 agreed.

Clause 189: Index of defined expressions

Amendment 183 not moved.

Amendment 184

Moved by ***Lord Ashton of Hyde***

184: Clause 189, page 108, line 20, at end insert—

"the made affirmative resolution procedure	section 169"

Amendment 184 agreed.

Clause 192: Application to the Crown

Amendments 184A and 184B

Moved by ***Lord Ashton of Hyde***

184A: Clause 192, page 111, line 3, after "of" insert "the GDPR and"

184B: Clause 192, page 111, line 4, at end insert "(to the extent that is not already the case).

( ) Where government departments are not able to enter into contracts with each other, a provision of the GDPR or this Act that would require relations between them to be governed by a contract (or other binding legal act) in writing is to be treated as satisfied if the relations are the subject of a memorandum of understanding between them."

Amendments 184A and 184B agreed.

Clause 193: Application to Parliament

Amendments 185 and 186 not moved.

Schedule 18: Minor and consequential amendments

Amendments 187 to 214

Moved by ***Lord Ashton of Hyde***

187: Schedule 18, page 200, line 23, leave out "sections 76C or" and insert "section"

188: Schedule 18, page 200, line 24, leave out "offences of disclosing information and" and insert "offence of"

189: Schedule 18, page 201, line 1, leave out "sections 76C or" and insert "section"

190: Schedule 18, page 201, line 2, leave out "offences of disclosing information and" and insert "offence of"

191: Schedule 18, page 201, line 17, leave out "sections 76C or" and insert "section"

192: Schedule 18, page 201, line 18, leave out "offences of disclosing information and" and insert "offence of"

193: Schedule 18, page 204, line 41, leave out "sections 76C or" and insert "section"

194: Schedule 18, page 204, line 42, leave out "offences of disclosing information and" and insert "offence of"

195: Schedule 18, page 208, line 42, leave out "Commissioner or"

196: Schedule 18, page 208, line 44, leave out "the Commissioner,"

197: Schedule 18, page 209, line 2, leave out "under this Act" and insert "in connection with appeals under section 60 of this Act.

(2) But this section does not authorise the making of a disclosure which is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

(3) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (2) has effect as if it included a reference to that Part."

198: Schedule 18, page 209, leave out lines 4 to 45

199: Schedule 18, page 211, line 18, leave out sub-paragraph (3)

200: Schedule 18, page 211, line 21, leave out "127(1)" and insert "127(3)"

201: Schedule 18, page 213, line 4, leave out "sections 76C or" and insert "section"

202: Schedule 18, page 213, line 5, leave out "offences of disclosing information and" and insert "offence of"

203: Schedule 18, page 216, line 27, leave out "sections 76C or" and insert "section"

204: Schedule 18, page 216, line 28, leave out "offences of disclosing information and" and insert "offence of"

205: Schedule 18, page 217, line 23, leave out "sections 76C or" and insert "section"

206: Schedule 18, page 217, line 24, leave out "offences of disclosing information and" and insert "offence of"

207: Schedule 18, page 224, line 27, leave out "sections 76C or" and insert "section"

208: Schedule 18, page 224, line 28, leave out "offences of disclosing information and" and insert "offence of"

209: Schedule 18, page 224, line 36, leave out "76C neu"

210: Schedule 18, page 224, line 37, leave out "troseddau o ddatgelu gwybodaeth ac" and insert "trosedd o"

211: Schedule 18, page 231, line 30, leave out "sections 76C or" and insert "section"

212: Schedule 18, page 231, line 31, leave out "offences of disclosing information and" and insert "offence of"

213: Schedule 18, page 232, line 28, leave out "sections 76C or" and insert "section"

214: Schedule 18, page 232, line 29, leave out "offences of disclosing information and" and insert "offence of"

Amendments 187 to 214 agreed.

The Deputy Speaker (Lord Geddes) (Con): My Lords, I am not really allowed to do this, but I would like to express my appreciation to the noble Baroness, Lady Finlay, for her education on Amendments 209 and 210. Fortunately, I have not had to read them out.

Clause 195: Commencement

Amendment 215 not moved.

Amendment 216

Moved by ***Earl Attlee***

216: Clause 195, page 112, line 31, at end insert—

"( ) sections (Publishers of news-related material: damages and costs) and (Publishers of news-related material: interpretive provisions);

Amendment 216 agreed.

Amendments 216A and 217 not moved.

House adjourned at 9.54 pm.